

SECOND AMENDED AND RESTATED
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
BROOKSTONE CONDOMINIUM
HOMEOWNER'S ASSOCIATION, INC.
IN
MURRAY CITY
SALT LAKE COUNTY, UTAH

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AMENDED AND RESTATED COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

BROOKSTONE CONDOMINIUM PROJECT

This Second Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Brookstone Condominium Project (this “Declaration”) is adopted by the Brookstone Condominium Homeowner’s Association, Inc., a Utah Nonprofit Corporation (the “Association”) and is effective as of the date it is recorded in the office of the Salt Lake County Recorder.

RECITALS

A “Declaration of Covenants, Conditions and Restrictions of Brookstone, A Prowswood Open Space Community Condominium (Phase I) (“Brookstone Project”)” (“Enabling Declaration”) was recorded with the Salt Lake County Recorder’s office on June 12, 1978, as Entry No. 3121458.

Four “Supplementary Declarations of the [Enabling Declaration]” were subsequently recorded with the Salt Lake County Recorder’s Office, in order respectively, on February 5, 1979 as Entry No. 3233272, January 4, 1980 as Entry No. 338430, April 6, 1982 as Entry No. 3663886, and November 10, 1982 as entry No. 3728826.

An “Amended and Restated Declaration of Covenants, Conditions and Restrictions of [Brookstone Project]” (“Amended and Restated Declaration”) was recorded with the Salt Lake County Recorder’s office on May 20, 1996 as Entry No. 6360654, which replaced the Enabling Declaration.

Three “Supplement[s] to the [Amended and Restated Declaration]” were recorded with the Salt Lake County Recorder’s Office, in order respectively, on July 30, 1996 as Entry No. 6416458, March 27, 2002 as Entry No. 8186979, and August 8, 2019 as Entry No. 13064478.

The Association, by and through its Board of Trustees and Owners, desires and intends to again modify and restate its governing declaration and to adopt bylaws by approving and recording this Second Amended and Restated Declaration of Covenants, Conditions and Restrictions for Brookstone Condominium Project, with Exhibits A, B and C.

NOW, THEREFORE, for the foregoing purposes and reasons recited above the Association hereby makes this Declaration pursuant to the provisions of the Utah Condominium Ownership Act which shall replace declarations heretofore made, supplemented and amended and constitute enforceable equitable servitudes, where reasonable, and shall run with the land.

ARTICLE 1: DEFINITIONS

As used herein, unless the context otherwise requires:

- 1.1 “Act” shall mean the Condominium Ownership Act codified at Utah Code Ann. §§ 57-8-1 *et seq.*, as may be amended from time to time.

- 1.2 **“Articles”** shall mean the Articles of Incorporation or the chartering document of any other legal entity, as may be amended from time to time.
- 1.3 **“Assessment”** shall mean any monetary charge imposed or assessed on an Owner by the Association as provided for in this Declaration or the Act, including “Annual Assessments,” “Special Assessments,” and “Individual Special Assessments.” Except as otherwise set forth and described in this Declaration, Annual Assessments include, but are not necessarily limited to, Assessments for annual budgeted “Common Expenses” (defined below); and, Special Assessments include, but are not necessarily limited to, significant “Capital Improvement” (defined below) projects. Individual Special Assessments generally include assessments for costs and expenses caused by, attributable to, or expended on behalf of an individual Owner. The use and limitations of Annual, Special, and Individual Special Assessments are further described in Article 7 of this Declaration.
- 1.4 **“Association”** shall refer to the Association of Unit Owners of Brookstone Condominium Project, the membership of which shall include each Owner in the Condominium Project. The Association is a Utah nonprofit corporation.
- 1.5 **“Board of Trustees” or “Board”** shall mean the body of elected or appointed people with primary authority to manage the affairs of the Association, including the responsibility and authority to make and enforce reasonable Rules covering the operations and maintenance of the Condominium Project. The Board of Trustees is also sometimes referred to in the Governing Documents as the “Management Committee” or “Committee.”
- 1.6 **“Board Member”** shall mean a duly qualified and elected or appointed member of the Board of Trustees.
- 1.7 **“Buildings”** shall mean the buildings containing the Units in the Condominium Project.
- 1.8 **“Bylaws”** shall mean the bylaws of the Association attached as **Exhibit C**, and all valid amendments and supplements thereto. No amendment to the Bylaws shall be effective until it is recorded as supplemental to the then current Declaration.
- 1.9 **“Capital Improvement”** shall mean and refer to non-recurring expenses (as opposed to day to day operating expenses) to repair, maintain, repurpose, replace, refurbish or eliminate significant fixed assets in the Common Area of the Project, such as the roofs, entry areas, roads, green space, sidewalks, recreational facilities, clubhouse and rooms, spaces, fixtures, furnishings and equipment within or around the clubhouse, pool, and other Project amenities intended to restore, enhance, improve, make safe or ameliorate the obsolescence, utility, usefulness, economies, value and beauty of the Common Areas and Project facilities and Equipment.
- 1.10 **“Common Area”** whether included or excluded on the Plat or in this Declaration, shall mean everything and everywhere in the Condominium Project that is not part of a “Unit”

as that term is defined herein and includes the “Limited Common Areas” as that term is defined herein.

- 1.11 **“Common Expenses”** shall mean all sums lawfully assessed against the Unit Owners for expenses incurred by the Association, including, but not limited to those incurred for:
- (a) Administration, maintenance, repair, or replacement of the Common Areas and Facilities, including those expenses incurred for “Capital Improvements” referenced above and otherwise agreed upon by the Association of Unit Owners;
 - (b) That which is declared Common Expenses by the Act or the Association’s “Governing Documents” as that term is defined herein;
 - (c) Management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys, consultants, and employees;
 - (d) Utilities (other than utilities that are separately metered and/or charged to the Units), extermination services for insects and rodents in Common Areas, landscape maintenance, and other related services;
 - (e) Insurance and bonds required or allowed by the Act and this Declaration;
 - (f) Amounts deposited in reserves; and,
 - (g) Other charges incurred by the Association as provided for or allowed in the Act or the Governing Documents and any other expenses of the Association arising from the operation of the Association and not otherwise excluded from Common Expenses by the Governing Documents or any applicable law.
- 1.12 **“Community Wide Standard”** shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Community as may be reviewed and specifically determined from time to time by the Board of Trustees.
- 1.13 **“Condominium Project”** shall mean the Brookstone Condominium Project and the land upon which it is located, and includes, whether leasehold or in fee simple, the Buildings, all improvements and structures thereon, all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith; as defined by the Plat and this Declaration and including the Units, the Common Area, and the Limited Common Areas. Condominium Project as defined in this Declaration is intended to have the same definition as “Property” defined in the Act.
- 1.14 **“Declaration”** shall mean this Amended and Restated Declaration (“Declaration”) including all attached exhibits, which, other than the Bylaws, are hereby incorporated by reference into the Declaration and shall be part of the Declaration, and all amendments to this Declaration hereafter adopted.

- 1.15 **“Demising” or “Party Wall”** means each wall or ceiling-floor physical boundary which is built as part of the original construction, or reconstruction, of the Buildings and placed on the dividing line (whether horizontal or vertical) between Units.
- 1.16 **“Electronic Transmission” or “Electronically Transmitted”** means a process of communication not directly involving the physical transfer of paper that is suitable for the receipt, retention, retrieval, and reproduction of information by the recipient, whether by email, texting, facsimile, or otherwise.
- 1.17 **“Governing Documents”** shall refer to this Declaration, as amended pursuant to its terms from time to time by the Owners, and its exhibits, the Plat, the Bylaws, the Rules, Articles of Incorporation, Rules promulgated from time to time by the Board of Trustees and any other documents or agreements binding upon all the Owners.
- 1.18 **“Lender”** shall mean a holder of a first mortgage or deed of trust on a Unit who has requested notice in writing from the Association in accordance with this Declaration.
- 1.19 **“Limited Common Area(s) and Facilities”** shall mean a portion of the Common Area specifically designated in this Declaration or the Plat for the exclusive use of Owners of one or more Units to the exclusion of all other Owners. Conveyance of a Unit includes the use of the Limited Common Area designated for the use of the Owner of that Unit, including, but not limited to, certain parking spaces adjacent to certain end Units, and designated patios, entrances and exits to and from the Units including driveways in front of a Unit’s garage and approaches giving access from the street as more fully described in Article 3.2.
- 1.20 **“Manager”** shall mean any Person engaged by the Association to manage the Condominium Project.
- 1.21 **“Occupant”** shall mean any Persons, other than an Owner, in possession of, using, entering, or living in a Unit in the Condominium Project, including, without limitation, family members, tenants, guests, and invitees of an Owner or an Occupant. Occupants shall include any trespassers or previously lawful Occupants if the Owner fails to secure the Unit against trespass, fails to take action necessary and appropriate to remove trespassers or previously lawful Occupants immediately upon notice of the trespass or occupancy, or fails to take reasonable measures to become aware of any unauthorized Occupants in the Unit or of any unauthorized entry and use of the Unit (which shall include the duty to verify the physical condition and occupancy of the Unit at least monthly if it is left unoccupied).
- 1.22 **“Owner”** shall mean the Person or Persons who have record title to a Unit, including those who hold a fee simple interest in the Unit (in whole or in part), according to the records of the Salt Lake County Recorder; however, Owner shall not include a trustee for a deed of trust.

- 1.23 **“Percentage Interest”** means the percentage assigned to each Unit by this Declaration as set forth in **Exhibit A** hereto which equates to the undivided ownership interest appurtenant to each Unit in the Common Area and Facilities.
- 1.24 **“Parking”** shall mean all clearly marked, off street parking places wherever located in the Common Areas of the Project, except those found in the Limited Common Areas and parking, generally, within the Condominium Project, regulated and enforced by the Board of Trustees.
- 1.25 **“Person”** shall mean a natural individual, corporation, estate, partnership, trustee, association, joint venture, government, governmental subdivision or agency, or any other legal entity with the legal capacity to hold title to real property.
- 1.26 **“Plat”** shall mean the record of survey map or maps of the Condominium Project (the “condominium plat” as used in the Act) recorded in the records of the Salt Lake County Recorder and all amendments and supplements thereto.
- 1.27 **“Property”** shall mean the property legally described in **Exhibit B** and all easements and rights appurtenant thereto.
- 1.28 **“Rules”** shall mean and refer to the rules adopted by the Board of Trustees.
- 1.29 **“Terms and Conditions”** shall mean any one or all of the terms, covenants, rights, obligations, and restrictions set forth in the Governing Documents.
- 1.30 **“Undivided Interest”** shall mean the interest of that Owner (expressed as a percentage in **Exhibit A** to this Declaration) in the Common Areas, which shall be applicable for the purposes of voting, the payment of Common Expenses, and for other purposes indicated in this Declaration or the Act.
- 1.31 **“Unit”** shall mean an individual condominium unit which is conveyed to an Owner and intended for the independent and exclusive use of the Unit’s Owner and includes the Undivided Interest appurtenant to such Unit as more fully described in Article 3.1.

**ARTICLE 2:
THE CONDOMINIUM PROJECT**

- 2.1 **Submission to the Act.** The Association hereby confirms and restates that the Condominium Project is a condominium project as defined in the Act.
- 2.2 **Binding Effect of Governing Documents.** The Property is part of the Condominium Project. The Condominium Project and all of the Units shall be held, transferred, mortgaged, encumbered, occupied, used, and improved subject to the Terms and Conditions, which Terms and Conditions shall, to the extent they are included in recorded documents, constitute equitable servitudes, easements, and covenants and conditions running with the land and shall be binding upon and inure to the benefit of the Association and each Owner, including their respective heirs, executors, administrators, personal representatives, successors and assigns. By acquiring any interest in a Unit, the

Owner consents to, and agrees to be bound by, each and every Term and Condition in the Governing Documents.

- 2.3 **Condominium Project Name.** The Condominium Project, as identified on the Plats, is named “Brookstone Condominium Project.” The Condominium Project is located entirely in Murray City, Salt Lake County, Utah
- 2.4 **Nature of the Condominium Project.** The Condominium Project primarily contains 220 Units in 69 Buildings. The Buildings are comprised of predominantly single story “townhome” style Buildings with 2 to 4 Units in each Building that share walls with one to three other Units. Some of the Buildings contain Units that are two story and all Units have full or partial basements. The Buildings are composed of wood frame, concrete foundations and basement floors, brick veneer and asphalt shingle roofs. The Condominium Project further includes a clubhouse, swimming pool, tennis/pickleball courts, picnic areas, water features, sidewalks, driveways, private asphalt streets and off-street parking, open space landscaping, and other Common Areas.
- 2.5 **Identification of Units.** All the Units are referenced specifically and identified by location on the Plat.
- 2.6 **Registered Agent.** The registered agent of the Association shall be as provided for in the entity filings of the Association with the State of Utah. The Board of Trustees may approve a change in the registered agent of the Association without any need for Owner consent.

**ARTICLE 3:
DESCRIPTION OF THE UNITS, LIMITED COMMON AREA, COMMON AREA,
AND UNDIVIDED INTERESTS**

- 3.1 **The Unit.**
- (a) The distinct Unit number that identifies the Unit on the Plat may or may not be consistent with the mailing address of the Unit.
- (b) Each Unit consists of and includes:
1. The space enclosed and bounded by the horizontal and vertical planes as shown on the Plat, and all interior partitions and other fixtures and improvements within such boundaries. For purposes of this Declaration, the horizontal and vertical boundaries of each Unit shall be the underside of the finished (dry wall) of each demising wall and level of the Unit, and the underside of whatever finishing material is applied to the concrete or plywood sub-floor;
 2. All materials constituting any part of the finished surfaces, including drywall, tile or laminate materials or that otherwise cover or decorate surfaces in the Unit;
 3. Therefore, all paneling, tile, wallpaper, paint, carpet, hardwood flooring, linoleum, and other materials constituting any part of the finished surfaces or installed on the framing and sub-surfaces in a Unit;
 4. All parts of non-bearing walls and partitions inside the boundaries of a Unit, meaning walls not on the exterior boundary of a Unit;

5. All pipes, wires, conduits, chutes, flues, ducts, shafts, public utility, water, power, air, sewer lines, or any other similar utility fixtures or line (“utility”) water heater, air conditioner, furnace or other built in appliance connected to a utility located inside the Unit or inside the vertical and horizontal boundary walls, ceilings, and floors of a Unit, beginning from the point at which the same join the utility serving another Unit or from where the utility serving only the Unit exits the Building; and,
 6. All windows and window frames, doors and door frames, skylights and skylight, window and door trims, both interior and exterior, including the garage door, window screen, screen door, storm door, or sliding door, fence gates, awnings, and window coverings, whether interior or exterior; associated thresholds, jambs, hinges, doorbells, chimes, handles, locks, and exterior lighting attached to the Unit, and all components therein, intended to serve a single Unit or for the exclusive use and benefit of the Owner of the Unit, regardless of whether the same is outside of the exterior boundary of the Unit as defined herein.
- (c) The boundaries of a Building or Unit constructed or reconstructed in substantial accordance with the Plat shall be conclusively presumed to be the actual boundaries rather than the description expressed in the Plat, regardless of the settling or lateral movement of the Building and regardless of minor variance between boundaries shown on the Plat and those of the Building or Unit.
 - (d) Each Unit, together with its Limited Common Areas and its Undivided Interest in the Common Areas, shall, for all purposes, constitute real property and may be individually conveyed and encumbered and may be inherited or devised by will or trust. Any Unit may be held and owned by more than one Person as joint tenants or as tenants in common, or in any other real property tenancy relationship recognized under the laws of the state of Utah.
 - (e) Each Unit shall be assessed separately for property taxes, assessments, and other charges of the state of Utah or of any political subdivision or special improvement district or of any other similar authority.
 - (f) Each Owner may separately convey, encumber, or mortgage the Owner’s Unit. No Owner may encumber the Common Areas, except to the extent of the Owner’s Undivided Interest in the Common Area appurtenant to the Unit. The provisions of this Declaration shall be superior to any such interest and in the event of any foreclosure (judicial or otherwise) the Person taking title shall be subject to this Declaration.

3.2 **The Limited Common Area.**

- (a) The Limited Common Area associated with each Unit shall consist of and include:
 1. The areas identified on the Plat or in this Declaration as Limited Common Area;

2. The concrete driveways and approaches from the street accessing a Unit's garage and the enclosing fencing, gates, hard surfaces of a patio or any other Limited Common Area assigned or appurtenant to any Unit; and,
 3. The back patio and rear yard, extending the length of any privacy fence and including any fenced-in area of a Unit located in a townhome style Building.
- (b) Upon written application, an Owner must receive prior, written approval from the Board before installing a fence, enclosing, building or installing a patio, or replacing any hard surface, driveway or approach in the Limited Common Area assigned to or appurtenant to any Unit.
 - (c) Should it be unclear from the Plat or this Declaration if a particular area is Common Area or Limited Common Area, the Board of Trustees shall have absolute authority in determining the proper designation of that area.
 - (d) If any area designated as Limited Common Area in the Plat, the Declaration, or (if unclear) by the Board of Trustees, is not physically associated with a particular Unit and is not identified as pertaining to a particular Unit in the Plat or this Declaration, the Board of Trustees may determine to which Unit the Limited Common Area pertains based on the following factors: advice of counsel, fairness to all Owners, and any established use, each of which shall have equal weight but none of which shall be individually determinative.
 - (e) The right to the exclusive use of the Limited Common Area shall be appurtenant to each respective Unit where so identified and may not be severed from the ownership of the Unit.
 - (f) The Association has the right to enter and inspect such Limited Common Area to ensure compliance with this Declaration and fulfill its maintenance responsibilities for Common Areas.

3.3 The Common Area.

- (a) The Common Area consists of all areas, everything, and everywhere within the boundary of the Condominium Project that are not described as part of a Unit, including but not limited to all Limited Common Areas subject to Article 3.1(b)6, and:
 1. The structural components of the demising wall between the Unit boundaries and of the respective levels of the Units as shown on the Plat and all exterior framing, concrete, and other structural components in the walls, floors, or ceilings on the vertical and horizontal boundaries of a Unit (as designated on the Plat);
 2. All framing, structures, and concrete in any bearing walls, and, generally, all concrete, wood or metal framing in exterior and demising walls, ceilings, and floors between the boundaries of the Units;

3. All parts of exposed concrete structural components in the Building (including the surface) in or at the boundary of a Unit and between Units; and,
- (b) The Common Area shall not be subject to separate taxation or assessment.

3.4 **The Undivided Percentage Interest and Allocating Voting and Assessments.** The Owners are entitled to vote based on their Undivided Interest for all matters related to the Association regarding which the Owners are permitted or required to vote. The Owners shall also pay their portion of all Assessments based upon their Undivided Interest. The Undivided Interests equal the Percentage Interests assigned to each Unit which are set forth per Unit in **Exhibit A** to this Declaration. Any difference in square footage, location, size, value, or other aspect of any Unit shall not be a reason to alter or change any Undivided Interest as presently calculated. The sum of the Undivided Interests allocated to all Units shall always equal one hundred percent (100%).

3.5 **Plat.** The Plat and all dimensions, descriptions, and identification of boundaries therein shall be binding on the Association and the Condominium Project. Notwithstanding the foregoing sentence, if any conflict exists between the Plat and this Declaration, this Declaration shall control.

ARTICLE 4: MAINTENANCE, REMODELING, AND UTILITIES

4.1 The Owner's Responsibility.

- (a) The Owner of a Unit, at the Owner's sole expense, shall furnish and be responsible for, all aspects of cleaning, maintaining, repairing, and replacing, when necessary, all aspects of the Owner's Unit and Limited Common Areas assigned or appurtenant to Owner's Unit, including all that constitutes a Unit as described and defined in Article 3.1 of this Declaration, except for the concrete driveways and approaches abutting the street and accessing a Unit's garage and the replacement of light bulbs in the front porch light fixture attached to the exterior wall of the Unit.
- (b) The Owner of a Unit, at the Owner's sole expense, shall also be responsible for cleaning, maintaining, repairing, and replacing, when necessary:
 1. All framing, insulation, and other materials associated with interior nonbearing walls;
 2. Any construction defect or damage resulting from ordinary use and exposure over time to all framing and structural components of the building including the bearing walls, boundary walls, and any other wall at or on the vertical or horizontal boundary of the Owner's Unit, excluding exterior wood siding and brick;
 3. All fixtures, appliances, and other improvements used or attached within the Unit;
 4. All landscaping located within the fenced-in Limited Common Areas assigned or appurtenant to the Owner's Unit; and,

5. Any storage area assigned to or owned by an Owner, if any, and located within the Condominium Project.
- (c) The Owner, at Owner's sole expense, is responsible for keeping the Owner's Unit and its assigned and appurtenant Limited Common Area in a clean and sanitary condition, free of pests, birds, rodents, stains, animal waste, and any tripping or other hazards. It is the Owner's responsibility to promptly and properly dispose of animal waste from anywhere in the Owner's Unit and Limited Common Area appurtenant to the Owner's Unit; and, in the Common Areas if it was that Owner's animal that left the waste in the Common Areas; and, to keep Owner's Unit, its windows, garage, storage and Limited Common Areas, both within and without the Unit, clean and free of clutter and trash.
 - (d) An Owner shall bear and may be assessed pursuant to Article 7.12 of the Declaration all costs associated with repairing or replacing any Common Area which is damaged by the negligent or willful act of the Owner, an Occupant of the Owner's Unit, or any other Person for whom the Owner is responsible.
 - (e) Without the prior written approval of the Board of Trustees, an Owner shall not replace or make any alterations, repairs, or modifications to the exterior of the Owner's Unit or the Limited Common Area appurtenant to the Unit, including (but not necessarily limited to) doors, windows, skylights, patios, fences, gates, and balconies. The Association may require that such repairs or modifications, if allowed, be made in a particular manner, by a particular Person, or that they comply with materials or aesthetics requirements (including color, style, materials, etc.) or other standards. The Board of Trustees may adopt reasonable Rules related to the oversight and approval of all repairs made to Limited Common Areas and Units.
 - (f) Subject to Utah law, the Board of Trustees may set forth in the Rules restrictions and guidelines as to what may or may not be kept, installed, or left on or in any Unit, storage area, parking area, or Limited Common Area.
 - (g) The Owner is obligated to keep garages and parking areas within the Limited Common Areas assigned or appurtenant to the Owner's Unit free of clutter, debris, and other items.
 - (h) The Association may establish Rules, policies, or guidelines to address areas of maintenance, repair, replacement, or cleaning unidentified or unresolved by this Declaration and to establish maintenance, repair, replacement, or cleaning responsibilities and standards for components, fixtures, and areas in between, on, or straddling areas of different maintenance responsibility.
 - (i) From time to time, the Association may adopt and promulgate as part of its Rules defining and regulating the approval and oversight process and restricting remodeling of Units and Limited Common Areas within the Condominium Project.
 - (j) Without the prior written approval of the Association, an Owner may complete

any maintenance or upgrades to the interior of a Unit or the replacing or treating of hard surfaces and enclosure fencing and gates in the Limited Common Areas appurtenant to any Unit which maintenance or upgrade may not otherwise be defined as remodeling in the Rules.

- (k) All utilities for individual Units (except those utility costs that are metered or charged collectively and paid by the Association as a Common Expense item) will be metered and charged separately to each Unit and such utility charges shall be the responsibility of the Unit Owner.

4.2 **Association Responsibility.**

- (a) Except the maintenance, repair, replacement and cleaning of the Owners' Units, including Limited Common Areas appurtenant to an Owner's Unit, which is the responsibility of the Owner as set forth in Article 4.1, the Association shall maintain, repair, replace, and clean the Common Area, which includes the portions of the Limited Common Area that are not the responsibility of the Owners.
- (b) Specifically, the Association's responsibility to repair, maintain, replace, and clean (as appropriate) includes, but is not necessarily limited to, the following:
 - (1) All concrete and asphalt surfaces and installations in the Common Area and Limited Common Area, except any that may exist within the patio of a Unit which is otherwise described as Limited Common Area;
 - (2) The exterior surfaces of the Buildings and all components that are a part of the exterior surface of the Buildings, except for those portions of the Limited Common Area appurtenant to a Unit described in Section 3.1(b)6., above;
 - (3) The roofs, rain gutters, fascia, soffits, and all related components;
 - (4) All equipment, lines, pipes, wiring, and fixtures related to the provision of: sewer drainage and waste removal and water, power and natural gas service for each Unit, wherever they might be located but only to the extent and only up to the point in a utility service line that serves only one Unit;
 - (5) All perimeter fences of the Project; however, if any Person damages the fences, then the Owner responsible for that Person and the Person shall be responsible for the costs and expenses of such repairs;
 - (6) The swimming pool, clubhouse, tennis/pickleball courts, water features, and all similar amenities located in the Common Area and not located within a Unit;
 - (7) All Common Area stairways, hallways, and common spaces;
 - (8) All Limited Common Areas, except as otherwise set forth in this Declaration and, specifically, Section 3.1(b)6., above;
 - (9) All window wells and sump pumps located in a window well;

- (10) Snow and ice removal from all sidewalks, walkways, driveways, and stairs; provided that the Association may adopt policies or Rules regarding how and when the snow may be removed from the streets and sidewalks leading to the Units; and
- (11) All exterior landscaping including mowing the lawn, trimming the trees, weeding flowerbeds, etc., unless a limited scope of the landscaping is assigned to a particular Owner as directed by the Board in the Rules, a particular decision approving an Owner's request, or this Declaration. The Board, through the Rules, may establish how the landscaping in the fully enclosed fenced-in Limited Common Areas will be maintained, repaired, and replaced and whether such will be done by the Association or the Owner.
 - (i) Until any Rule to the contrary is adopted, the Owner will be responsible for mowing the lawn located in the fully enclosed fenced-in Limited Common Areas appurtenant to the Owner's Unit. The Owner shall be responsible for all maintenance, repair, and replacement of the lawn, flowers, shrubs, trees, etc. within the enclosed area.
 - (ii) If a tree is removed from the Common Area, the tree must either be dead, diseased to the extent that it is no longer treatable, or its root system materially threatens or is currently compromising the structural integrity of a Unit, road, sidewalk, etc., within the Condominium Project. Should the Board choose to remove a healthy tree from the Common Area, it must be authorized by the vote of Owners holding at least fifty-one percent (51%) of the Undivided Interests at a meeting called for that purpose. Should a tree be removed for any reason, the Board shall, in its sole discretion, decide whether to plant a new tree and the type of any new tree.
- (c) The Association shall have the right to modify, remove fixtures from, add fixtures and structures to, place signs upon, and otherwise modify the Common Area (subject only to the obligation to get approvals for significant, material alterations to the Condominium Project). The Association shall do all such other and further acts that the Board of Trustees deems necessary to preserve and protect the Common Area, in accordance with the general purposes specified in this Declaration.

4.3 **Owner Approval for Certain Improvements.** Improvements shall be governed by and subject to the following conditions, limitations, and restrictions:

- (a) Any improvement (repair, replacement, modification, or upgrade) to the Condominium Project that does not materially alter the Condominium Project may be authorized by the Board of Trustees alone.
- (b) Regardless of its cost and prior to being constructed or started, any improvement that would materially alter the Condominium Project must be authorized by the

vote of Owners holding at least fifty-one percent (51%) of the Undivided Interests at a meeting called for that purpose and must be approved of by the Board of Trustees. No material alteration that changes the size, shape, or location of any Unit shall be permitted without the written consent of all directly affected Owners.

- (c) For purposes of this Article 4.3, a “material alteration” to the Condominium Project means the installation of a previously non-existent and materially significant fixture or the permanent removal of a materially significant exterior improvement such as a swimming pool, tennis court, water features or parking area; however, things such as landscaping alterations, general remodeling, repurposing Common Area spaces such as those within the Clubhouse or pool area, updating or removal of existing fixtures and equipment, including boilers, electrical systems, plumbing equipment, appliances, tools and vehicles, or determining not to do so, and the addition or removal of signs or small structures are not material alterations to the Condominium Project.

- 4.3 **Standard of Maintenance.** The Board of Trustees shall determine, in its sole discretion, the appropriate maintenance standard for the Common Area and Limited Common Area, so long as those areas are maintained in a safe condition and in the best interests of the Owners.
- 4.4 **Default in Maintenance.** If an Owner or Occupant fails to: (1) maintain or clean a Unit or Limited Common Area as required in the Governing Documents; or (2) make repairs otherwise required of the Owner in such a manner as may be deemed reasonably necessary in the judgment of the Board of Trustees to preserve and protect the structural integrity, attractive appearance, good condition, and value of the Units in the Condominium Project, then the Association may take any action allowed for a failure to comply with the Declaration and may give written notice to such Owner or Occupant stating with particularity the nature of the default and the corrective action that the Board of Trustees determines to be required and requesting that the same be carried out within a period of at least thirty (30) days. If the Owner or Occupant fails to carry out such action within the period specified by the notice, then the Board of Trustees may cause corrective action to be taken (which may include completing the repairs and replacements) and may assess the Owner for all costs associated therewith.
- 4.5 **Landscape Maintenance.** Absent the adoption of a Rule allowing otherwise, no one may alter, change, or maintain any landscaping, plants, or other plantings in the Common Area without the prior written approval of the Board of Trustees. The Association may adopt Rules further identifying the Owner’s landscaping maintenance responsibilities for the Limited Common Area.

**ARTICLE 5:
ORGANIZATION AND GOVERNANCE OF THE ASSOCIATION**

- 5.1 **Organization of Association.** The Association shall serve as the organizational body for all Owners.

- 5.2 **Modifying or Changing the Name of the Condominium Project.** The name of the Condominium Project may be modified or changed pursuant to a lawful amendment to this Declaration.
- 5.3 **Legal Organization.** The Association is organized as a Utah non-profit corporation. In the organization, reorganization, or amendment of any documents related to the legal organization of the Association, the terms in all such documents shall, to the extent possible under the applicable law, be consistent with the terms in the Declaration and the Bylaws. If the legal entity should ever expire or be dissolved for any reason as required or permitted by law, in any reorganization or reinstatement of the entity, the Association shall, to the extent possible and subject to any then existing legal requirements, adopt documents with terms substantially like the documents related to the expired or dissolved entity.
- 5.4 **Membership.** Membership in the Association shall consist exclusively of the Owners. Each Owner shall be a member of the Association so long as such Owner has an ownership interest in a Unit and such membership shall automatically terminate when the Owner ceases to have an ownership interest in a Unit. Upon the transfer of an ownership interest in a Unit, the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association. If titled ownership to a Unit is held by more than one Person, the membership appurtenant to that Unit shall be shared by all such Persons in the same proportional interest and by the same type of tenancy in which title to the Unit is held.
- 5.5 **Availability of Documents.** The Association shall make available to the Owners, Lenders and insurers of any Lender, current copies of the Governing Documents and other records the Association is required to keep pursuant to applicable law. The term “available” as used in this Article shall mean available for inspection and copying within a reasonable time pursuant or that established time period required by law, after receiving a proper request, during normal business hours and under other reasonable conditions. The Association shall have the right to refuse to disclose information that the Board of Trustees determines, in good faith, would reveal sensitive, personal or financial information of another Owner or of an employee or agent of the Association, such as bank account numbers, birth dates, social security numbers, health records, documents an Owner has requested to be kept confidential or any communication or document subject to the attorney–client privilege. The Association may require that the Owner comply with any statutory provision or other legal requirement applicable to providing this information before providing it. Subject to any legal requirements to the contrary, the Association may charge a fee for the reasonable cost of producing documents or information. Notwithstanding any of the foregoing, the Association shall comply with any applicable legal requirements applicable to this Article 5.5.
- 5.6 **Board of Trustees.** The governing body of the Association shall be the Board of Trustees elected and removed as provided in the Bylaws. The Board of Trustees shall consist of five (5) members, which number may be established through a resolution of the Board and change from time to time through further resolution or by amendment to the Bylaws as provided therein. Each Board of Trustees Member may serve for the terms determined by the Board of Trustees or as may be set forth elsewhere in the Articles or

Bylaws of the Association. Except as otherwise provided in the Governing Documents, the Board of Trustees shall act, in all instances, on behalf of the Association and in the best interest of the Owners. Any reference to an act, right, or obligation of the Association in the Governing Documents may only be exerted or complied with through an action of the Board of Trustees. Except as may be specifically provided in this Declaration, the Articles, or by applicable law, no Owner or group of Owners other than the Board of Trustees may direct the actions of the Association.

- 5.7 **Board of Trustees Member Requirements.** The Bylaws shall set forth the qualifications for serving as a Member of the Board of Trustees and may place reasonable obligations and requirements on existing Board of Trustees Members to retain their membership on the Board of Trustees, such as a requirement that a Board of Trustees Member attend a specified number of meetings. The Bylaws may further provide for a procedure for removal of any Board of Trustees Member who fails to comply with the reasonable requirements, which may include some action of the remaining Board of Trustees Members.
- 5.8 **Limitation on Authority of Owners, Board of Trustees Members, Officers, & Committee.**
- (a) Except as otherwise provided herein or in the Bylaws, the Board of Trustees, any individual Owner, and any individual Board of Trustees Member or Officer shall have no authority to and may not act on behalf of the Association or the Board of Trustees to:
- (1) Amend or terminate any Governing Document;
 - (2) Elect or remove members of the Board of Trustees;
 - (3) Establish or change the qualifications, powers and duties, requirements, or terms of Board of Trustees Members or of the Board of Trustees; or
 - (4) Authorize or agree to any deviation or exception from the Terms and Conditions.
- 5.9 **No Reliance on Actions Contrary to Governing Documents.** No one may rely upon any authorization (from the Board of Trustees or otherwise) contrary to the terms of the Governing Documents regardless of the circumstances under which it is given, and no claim or defense of estoppel or waiver or similar equitable or legal claim or defense may be raised by anyone related to any alleged reliance. It is the responsibility of anyone interacting with, visiting, occupying, or purchasing a Unit in the Association to verify that anything that the Association does, does not do, or authorizes related to the Condominium Project or the Association is in compliance with the terms of the Governing Documents.
- 5.10 **Registration with the State.** In compliance with Utah Code Ann. § 57-8-13.1, the Association shall be registered with the state Department of Commerce and shall update its registration to keep any required information current as required by law.

**ARTICLE 6:
GENERAL RIGHTS AND RESPONSIBILITIES OF THE ASSOCIATION**

- 6.1 **Rights and Responsibilities of the Association.** In addition to any others Association rights and responsibilities set forth in the Governing Documents or provided by law, the Association shall have the following rights and responsibilities:
- (a) Paying Expenses. The Association shall provide for the payment of Association expenses.
 - (b) Setting and Collecting Assessments. The Association shall establish, collect, and account for Assessments as necessary to operate the Condominium Project consistent with the requirements of the Governing Documents and the Act, as the same may be altered and amended from time to time by the Board of Trustees and the Utah Legislature, and under the “Percentage Interest” formula set forth above in Article 3.3.
 - (c) Entering Units. After having given the appropriate notice as provided for in Article 17 of this Declaration, the Association shall have the right, in the sole discretion of the Board of Trustees, at all times upon reasonable notice (and at any time in case of an emergency) to enter into any Unit or the Limited Common Areas appurtenant to any Unit to abate any infractions or correct any violation of any of the Terms and Conditions, to make repairs, or to abate any condition that threatens the health or property of any Owner or Occupant.
 - (d) Adopting and Enforcing Rules. The Association may adopt Rules for the regulation and operation of the Condominium Project. If Rules are adopted, they shall be consistently and uniformly enforced. Unless precluded by law, the Rules may address any issues including those addressed in any other Governing Document. The Rules may supplement, clarify, and add detail to issues addressed in the other Governing Documents so long as they do not contradict the same. The Board’s determination as to whether a particular activity being conducted or to be conducted violates or will violate the Rules shall be conclusive, subject to any timely judicial determination. A Rule must be reasonable in light of the circumstances pertaining to the situation or issue the Rule addresses.
 - (e) Hiring Managers and Delegating Responsibilities. The Association may hire a Manager to assist the Board of Trustees in the management and operation of the Condominium Project and may delegate its powers and obligations in the Governing Documents to the Manager, employees, or other agents as it deems appropriate; provided, however, that only the Board of Trustees shall have the right to approve Association budgets, fines to Owners, and Annual and Special Assessments. The Board of Trustees may revoke at any time, with or without cause, any powers and duties delegated to any Manager or other Person. The terms of any agreement or management agreement between the Association and a Manager must provide that: 1) the Association may terminate the agreement without penalty and with or without cause upon thirty (30) days’ notice; and, 2) the financial accounts and records maintained by the Manager are done so for the benefit of and belong to the Association, and must be surrendered and assigned to

the Association or its new Manager upon termination of any Manager regardless of the reason for termination. **To avoid any doubt, the Board of Trustees has no authority to enter into any agreement or contract for management of the Association or the Condominium Project inconsistent with the terms of the Governing Documents or that allows for a termination fee or requires termination for cause or that gives up ownership or control of the Association's financial accounts or financial, accounting or any other records. The Manager shall not be granted signatory authority on any accounts of the Association.**

- (f) Enforcement Rights. In addition to any other remedies allowed or provided for in the Governing Documents for any violation of the Governing Documents, the Association may: (1) impose fines; (2) collect rents directly from tenants if Owners fail to pay Assessments; (3) terminate Owners' and their Units' respective Occupants' rights and access to Common Areas and Facilities, and/or suspend Owner's voting rights; and, (4) take any other action or seek any other remedy allowed by the Governing Documents, the Act, or other applicable Utah law.
- (g) Uniform Enforcement. The Board of Trustees shall uniformly and consistently enforce and implement the Terms and Conditions in the Governing Documents.
- (h) Capital Reserve Fund. The Association shall establish a capital reserve fund and obtain and update a Reserve Analysis as required in this Declaration and the Act. The Association shall cause a reserve analysis to be conducted no less frequently than every six years and shall review and, if necessary, update a previously conducted reserve analysis no less frequently than every three years.
- (i) Preventing Conflicts with Service Providers and Vendors. Unless the Board of Trustees specifically authorizes it as documented in the minutes of the Association after full disclosure of all aspects of the potential conflict, the Association shall not permit any paid services or materials obtained by the Association to be performed or provided by: (1) any relative of any Board of Trustees Member; (2) any business or entity in which a Board of Trustees Member has the controlling interest or serves as the manager or president; or (3) any business, entity, or Person with any familial or financial relationship with any Board of Trustees Member.
- (j) Establishing Hearing Procedures. The Board of Trustees shall have the authority to create a reasonable hearing process applicable to any adverse action taken by the Association to enforce the Governing Documents against any Owner or group of Owners. The Board of Trustees shall not be under any obligation to offer a hearing process, except as required by law or by the Governing Documents, and in any such process, shall have the authority to designate the procedure related to any such hearing and to make all final determinations of issues subject to the hearing process. The Board of Trustees may establish the hearing process on an as-needed basis for matters as they arise or may set forth a process in the Rules applicable generally to such matters that it designates. Any such hearing process shall provide, at a minimum for: (1) at least two (2) weeks' notice of the hearing

to the Owners; and (2) a reasonable time period under the circumstances for the Owner(s) to present their own testimony, the testimony of others, argument, authority, evidence, and other information the Owner deems relevant to the disputed issue at the meeting.

- (k) Annual Meeting. The Board of Trustees shall arrange for and conduct an annual meeting as provided for in the Bylaws and shall arrange for and conduct such other meetings of the Association as shall be properly requested pursuant to the Governing Documents or law.
- (l) Review and Audit of Association Finances. The Association may have an independent accountant conduct a review of the Association's finances. The Association shall make any such review available to the Owners. Any Owner may have an audit or review conducted of the Association's records by a CPA, at that Owner's expense, and the Association shall cooperate in providing access to any records needed for that audit or review from the documents the Association is required to keep by law. Upon receipt of a request signed by owners holding twenty percent (20%) of the Undivided Interests, the Board of Trustees shall have an audit conducted of the Association's finances by a CPA, at the Association's expense, and shall make the audit available to the Owners.
- (m) Easements, Maintenance, and Use Rights. The Association, through the Board of Trustees, shall have the right to grant easements, rights-of-way, and use rights upon or through the Common Areas, and to enter into agreements to maintain property outside of the Condominium Project if such maintenance shall, in the Board's discretion, provide a benefit to the Association or the Owners.
- (n) Other Necessary Rights. The Association shall have any other right that is reasonably necessary to carry out the terms of the Governing Documents.

ARTICLE 7: BUDGETS & ASSESSMENTS

7.1 **Purpose of Assessments.** Money collected by the Association shall be used for the purposes of promoting the health, safety and welfare of the Owners; the management, maintenance, care, preservation, operation, and protection of the Condominium Project; enhancing the quality of life of the Owners in the Condominium Project; enhancing and preserving the value of the Condominium Project and Units; and in the furtherance of carrying out or satisfying any other responsibility or power of the Association.

7.2 **Budget and Annual Assessments.**

- (a) The Board of Trustees is authorized and required to prepare and adopt a budget annually. The budget shall estimate the total Common Expenses to be incurred for the next calendar year (or that calendar year for a revised budget), which shall be broken down into reasonably detailed expense categories. The budget may include reserves, contingencies, and estimates as the Board of Trustees deems appropriate.

- (b) The budget prepared and adopted by the Board of Trustees for the following year may be provided to the Owners prior to the annual meeting but shall also be presented to the Owners and discussed at the annual meeting.
 - (c) The Board of Trustees shall determine the amount of the Annual Assessments to be paid by the Owners of each Unit by multiplying the total budgeted amount (operations plus reserves) by the Undivided Interests percentage for each Unit model and then by dividing that number by the total number of Units of that model.
- 7.3 **Payment of Annual Assessments.** The Board of Trustees shall communicate to each Owner the Unit's Annual Assessment, and each Owner shall pay to the Association the Owner's Annual Assessment in equal monthly installments beginning on January 1st of the new budget year.
- 7.4 **Adjustments to Annual Assessments.** In the event the Board of Trustees determines that the estimate of total charges for the current year is, or will become, inadequate to meet all Common Expenses for any reason, it may then revise the budget and each Owner's share of the new budget total based on the Owner's Undivided Interest. Upon notice of the adjustment, and unless modified by the Board of Trustees, each Owner shall thereafter pay to the Association the Owner's adjusted Annual Assessment in equal monthly installments.
- 7.5 **Personal Obligation for Assessments.** Each Owner of any Unit, by acceptance of a deed or other instrument creating in such Owner the interest required to be an Owner, whether or not it shall be so expressed in any such deed or other instrument and regardless of any lien rights or lack thereof, hereby personally covenants and agrees with each other Owner and with the Association to pay to the Association any Assessments as provided for in the Governing Documents., Each such Assessment, together with any interest, collection charges, costs and attorney fees, shall also be the personal obligation of the Owner of such Unit beginning at the time the Assessment is assessed.
- 7.6 **Improvements.** Expenses for improvements may be included in the budget, paid for through Special Assessments, or paid for in any other manner the Board of Trustees determines.
- 7.7 **Allocation of Assessments.** All Assessments (other than Special Assessments to individual Units) shall be allocated to Owners based on the Undivided Interest applicable to the Unit.
- 7.8 **Rules Regarding Billing and Collection Procedures.** The Board of Trustees may adopt Rules setting forth procedures applicable to Assessments provided for in this Declaration and for the billing and collection of all Assessments, provided that such procedures are not inconsistent with the provisions herein. Such procedures and policies may include, but are not limited to, the date when Assessment payments are due and late, establishing late fees and collection charges, and establishing interest (per annum or compounded) that may be charged on unpaid balances. The failure of the Association to send a statement to an Owner or an error in any such statement (other than a Certificate of Payment) shall not relieve any Owner of liability for any Assessment or charge under the Governing Documents.

- 7.9 **Statement of Unpaid Assessment.** An Owner may request a statement from the Association showing an accounting of all unpaid assessments and charges to the Owner's account. The Association may set forth in the Rules the amount of the fee that the Association will charge for providing such statement; however, unless a different amount is set forth in the Rules, such fee will be twenty-five dollars (\$25.00). For any valid request, the Association shall provide a written statement of account within a reasonable time. A written statement from the Association is conclusive in favor of a Person who relies on the written statement in good faith.
- 7.10 **Account Payoff Information.** The Association may charge a fee for providing account payoff information in connection with the closing of an Owner's financing, refinancing, or sale of a Unit. The Association may set forth the amount of the fee in the Rules up to the maintenance amount allowed by law. Unless otherwise determined by the Association in its Rules or as otherwise set forth in the Act, such fee shall be fifty dollars (\$50.00). Within five (5) business days of any complete payoff information request, the Association shall provide Assessment payoff information needed for the closing. A request for payoff information needed for a closing must: (a) be conveyed in writing; (b) be conveyed to the primary contact person designated by the Association; (c) contain: (1) the name, telephone number, and address of the person making the request; and (2) the facsimile number or email address for delivery of the payoff information; (d) be accompanied by a written consent for the release of the payoff information: (1) identifying the person requesting the information as a person to whom the payoff information may be released; and (2) signed and dated by an Owner of the Unit for which the payoff information is requested. Each certificate is conclusive in favor of a Person who relies on the written statement in good faith.
- 7.11 **Special Assessments.** Subject to any limitations in this Declaration for the particular type of expense, the Association is expressly authorized to set and collect Special Assessments payable as may be determined by the Board of Trustees (in lump sums or over a period of time) to pay for any Common Expenses or Capital Improvement. Without in any way limiting the foregoing, Special Assessments may be used to fund Common Expenses anticipated in an upcoming budget cycle, or for Capital Improvement projects which the Board of Trustees determines in its sole discretion to fund partially or fully by Special Assessment in addition to or instead of funding the project from the Association's Capital Reserve Fund. Funds generated from a Special Assessment can only be expended for the purpose for which the Special Assessment was assessed by the Association. Notwithstanding the wording or terms of any notice of a Special Assessment, a Special Assessment shall be deemed assessed, for all purposes, on the date notice of the Special Assessment is delivered to the Owner. The Notice shall set forth the specific purpose for the Special Assessment and state the deadline for and terms of payment. No more than one Special Assessment may be assessed by the Board of Trustees within an annual budget cycle and the amount of said Special Assessment may not be in excess of 100 percent (100%) of the total Annual Assessment in an annual budget cycle.
- 7.12 **Individual Special Assessments to Individual Units.** Special Assessments may be assessed by the Association against a particular Unit and its Owner for:

- (a) Costs incurred in bringing an Owner or the Owner's Unit into compliance with the provisions of the Governing Documents, including the payment of past due Assessments;
 - (b) Costs associated with the maintenance, repair or replacement of a Limited Common Area assigned to such Unit if such cost is the responsibility of the Owner as provided for in this Declaration;
 - (c) Subject to the provisions in this Declaration related to insurance responsibility and deductible allocation, if the need for maintenance or repair is caused by the fault or negligence of an Owner or an Occupant, the Association may assess the Owner the actual cost of such maintenance or repair to the extent the repair costs are not paid for by any applicable insurance;
 - (d) Any other charge designated as pertaining to an individual Unit in the Governing Documents;
 - (e) Fines, late fees, collection charges, and interest; and
 - (f) Attorney fees, costs, and other professional expenses relating to any of the above.
- 7.13 **Acceptance of Materials or Services.** In the event the Association undertakes to provide materials or services that are not otherwise required for the maintenance of the Condominium Project, which benefit individual Units, and which can be accepted or not by individual Owners, such Owners, in accepting such materials or services, agree that the costs thereof may be a Special Assessment pertaining to that Unit, at the Board's discretion.
- 7.14 **Application of Excess Assessments.** In the event the amount collected to meet Common Expenses for a particular fiscal year proves to be in excess of the actual Common Expenses, the Board of Trustees in its sole discretion may retain the excess in the Association's operating account as working capital, apply the excess to reserves, credit the excess against future Assessments, refund the excess to the Owners in proportion to the Undivided Interest of each Unit, or take other action with the funds permitted under this Declaration, as the Board of Trustees deems appropriate. The decision of the Board of Trustees shall be binding and conclusive. In addition, the Association shall not be obligated to reduce the amount of Assessments in succeeding years if an excess exists for a prior year.
- 7.15 **No Offsets.** All Assessments shall be payable at the time and in the amount specified by the Association, and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that the Board of Trustees is not properly exercising its duties and power, a claim in the nature of offset or that the Association owes the Owner money, or that the Association is not complying with its obligations as provided for in the Governing Documents.
- 7.16 **Application of Payments.** Unless otherwise provided for in the Rules, all payments for Assessments shall be applied to the earliest charges first. Owners shall have no right to direct the application of their payments on Assessments or to require application of payments in any specific order, to specific charges, or in specific amounts.

- 7.17 **Administration of Assessment Funds.** The Association shall keep all Assessment-generated funds in an account, or accounts, in the name of the Association. The Association shall not commingle Assessment-generated funds with the personal funds of any other Person.
- 7.18 **Loans.** Upon the approval of two-thirds of the members of the Board of Trustees, the Association may borrow money or enter into leases, where the total amount of the loan(s) or value of the lease(s), in aggregate, does not exceed 10% of the total annual budget and may provide such security as necessary for the loan or lease, including but not limited to securitizing, pledging, or assigning the Association's right to assess Owners. Any loan amount or lease value that increases the debt load by more than Ten percent (10%) of the total annual budget may only be approved by Owners holding fifty-one (51%) of the Undivided Interests by vote at a meeting called for that purpose. Notwithstanding anything to the contrary, no Unit shall be security for any loan to the Association without that Unit Owner's written consent.
- 7.19 **Reinvestment Covenant upon Sale or Transfer of Unit.** The Board of Trustees may require the transfer or/seller or transferee/buyer to pay a fee related to the transfer of a Unit (a "**Reinvestment Fee**") as provided for in Utah Code Ann. § 57-1-46. Pursuant to said law, the Board of Trustees may set forth the procedures and regulation concerning the assessment of a Reinvestment Fee, or "Transfer Fee" as it is sometimes called, in the Rules of the Association. The Reinvestment Fee shall be one half of one percent (.5%) of the value of the Unit at the time of transfer as determined by the higher of the then current property tax valuation, the purchase price paid at transfer, or that may be determined by an independent appraisal as of the date of transfer.

ARTICLE 8:

NONPAYMENT OF ASSESSMENTS & JOINT AND SEVERAL LIABILITY

- 8.1 **Delinquency.** Assessments not paid within the time required shall be delinquent. Whenever an Assessment is delinquent, the Board of Trustees may, at its option, invoke any or all of the remedies granted in this Article 8.
- 8.2 **Collection Charges and Interest.** The Association may adopt or establish billing and collection procedures, including the amount of late fees and interest, in the Rules or by resolution in accordance with Utah Law.
- 8.3 **Joint and Several Liability of Owner and Future Owners for All Past and Presently Accruing Unpaid Assessments.** The Owner and any future Owners of a Unit are jointly and severally liable for all Assessments accruing related to that Unit prior to and during the time that an Owner is an Owner. An Owner is not liable for any Assessments accruing after an Owner has lawfully transferred the Unit to another Owner. The recording of a deed to someone or some company that has not agreed to take ownership of the Unit, or an attempted transfer to a person or entity for the purpose of avoiding any Assessments, shall not be considered a legal conveyance of title. The obligation in this paragraph is separate and distinct from any lien rights associated with the Unit.
- 8.4 **Lien.** The Association has a lien on each Unit for all Assessments, which include but are not limited to interest, collection charges, late fees, fines, attorney fees, court costs, and other costs of collection (which shall include all costs and not be limited by those costs

that may be awarded under the Utah Rules of Civil Procedure). This lien attaches to the Unit as of the date of the recording of the Declaration and is perfected upon the filing of the Notice of Lien when a given Unit falls delinquent in paying any Assessment and has priority over all encumbrances recorded after the Declaration was recorded, except as otherwise required by law. Through the recording of this Declaration, such lien remains in place and is perfected and shall continue to have priority over all encumbrances recorded after the Declaration was recorded, except as otherwise required by law. If an Assessment is payable in installments, the lien is for the full amount of the Assessment from the time the first installment is due, unless the Association provides otherwise in the notice of Assessment. The Association's lien shall have priority over each other lien and encumbrance on a Unit except only: (a) a lien or encumbrance recorded before the Enabling Declaration was recorded; (b) a first or second security interest on the Unit secured by a mortgage or trust deed that is recorded before a recorded notice of lien by or on behalf of the Association; and (c) a lien for real estate taxes or governmental assessments or charges against the Unit. The Association may, but need not, record a notice of lien on a Unit.

- 8.5 **Action at Law.** The Association may bring an action to recover a delinquent Assessment either personally against the Owner obligated to pay the same or by foreclosure of the Assessment lien. In addition, the Association's choice of one remedy shall not prejudice or constitute a waiver of the Association's right to exercise any other remedy. Any attorney fees and costs incurred in this effort shall be assessed against the delinquent Owner and the Owner's Unit, and reasonable attorney fees and court costs will thereafter be added to the amount in delinquency (plus interest and collection charges, if appropriate). Each Owner vests in the Association or it assigns the right and power to bring actions at law or lien foreclosures against such Owner or Owners for the collection of delinquent Assessments.
- 8.6 **Foreclosure Sale.** The Association shall have all rights of foreclosure granted by the Act, both judicially and non-judicially. Pursuant to Utah Code Ann. Articles 57-1-20 and 57-8-44 to -53, an Owner's acceptance of an interest in a Unit constitutes a simultaneous conveyance of the Units in trust, with power of sale, to Richard M. Matheson, as trustee, for the benefit of the Association, for the purpose of securing payment of Assessments under the terms of this Declaration. The Board of Trustees may appoint a qualified successor trustee by executing and recording a substitution of trustee form.
- 8.7 **Association Lien Not Subject to Homestead Exemption.** Pursuant to Utah Code § 57-8-44(5), any lien of the Association arising under Article 44 of the Act is not subject to any Owner's homestead exemption, and each Owner hereby waives any homestead or exemption laws of the State of Utah now in effect, or in effect from time-to-time hereafter that relate to the Association's lien arising under the Act and this Declaration.
- 8.8 **Termination or Suspension of Delinquent Owner's Rights.** Pursuant to Utah Code § 57-8-52, the Association may terminate, or suspend, a delinquent Owner's: (a) rights to receive a utility service for which the Owner pays a Common Expense; and (b) access to certain Common Areas and recreational facilities. The Association may further suspend a delinquent Owner's right to vote in regard to any Association matter. Before terminating any delinquent Owner's rights under this provision, the Association shall give the

delinquent Owner notice in accordance with Article 17 of this Declaration. The notice shall also include any specific provisions required by the Act and give the delinquent Owner the right to request an informal hearing with the Board prior to the Association terminating or suspending the delinquent Owner's rights.

8.9 **Requiring Tenant to Pay Rent to Association.** Pursuant to and as provided for in the Act, the Association shall have a right to demand and collect rent from any tenant in a Unit for which an Assessment is more than sixty (60) days late. Any tenant who fails to pay such rent when demanded shall be liable to the Association for the amount of any unpaid rent and all collection costs and reasonable attorney fees related to the failure to pay as provided for in Article 8.10 and regardless of whether an action is commenced or not.

8.10 **Attorney Fees Incurred as a Result of a Default.** In addition to any attorney fees and costs provided for herein, the Association shall be entitled to recover all reasonable attorney fees and costs incurred as a result of an Owner's failure to timely pay Assessments, including but not limited to attorney fees and costs incurred to: (a) obtain advice about a default; (b) collect unpaid Assessments; (c) file lawsuits or other legal proceedings related to a default in an effort to collect unpaid Assessments; (d) file pleadings, notices, objections, and proofs of claim in any bankruptcy proceeding; (e) examine the debtor or others related to collections; (f) monitor any bankruptcy proceedings including but not limited to regular monitoring of an Owner's progress in a Chapter 13 plan for the duration of the plan; (g) file relief from stay motions, objections, or other adversary proceedings in bankruptcy and all related activities including seeking and responding to discovery, taking depositions or examinations, introducing evidence, hiring and paying expert witnesses, filing motions and other pleadings, attending trials, hearings, or other court proceedings, including as necessary related to assert any non-dischargeability of debts, to assert claims against the estate or co-debtors, to challenge exemptions, to pursue any appropriate adversary proceeding, or for any other reason related to the ultimate attempt to collect unpaid Assessments; and (h) foreclose a lien, secure lien rights, or provide for any notice of lien. This provision is to be construed broadly to permit the Association to recover any reasonable fees and costs in any way related to an Owner's default in the payment of Assessments and the ultimate collection of those Assessments.

8.11 **Association Foreclosure.** If the Association takes title to a Unit pursuant to a foreclosure (judicial or non-judicial), it shall not be bound by any of the provisions related to the Unit that are otherwise applicable to any other Owner, including but not limited to: obligations to pay assessments, taxes, insurance, or to maintain the Unit. By taking a security interest in any Unit governed by this Declaration, Lenders agree not to make any claim against the Association for nonpayment of taxes, assessments, or other costs and fees associated with any Unit if the Association takes title to a Unit related to any failure to pay assessments.

ARTICLE 9:

PROPERTY RIGHTS IN UNITS AND COMMON AREA

9.1 **General Easements to Common Area and Units.**

- (a) Subject to limitations in the Governing Documents, each Owner shall have an Undivided Interest in, and easement of use and enjoyment in and to, the Common Areas for the purposes for which they were intended. Such use cannot hinder or encroach upon the lawful rights of the other Owners and may not extend into the Limited Common Area reserved for the use of an Owner of another Unit. Each Owner shall have an unrestricted and non-exclusive right of ingress or egress to and from the Owner's Unit over and across such Common Area, subject to any other restrictions related to such use. Such rights and easements shall be appurtenant to and shall pass with title to each Unit and in no event shall such appurtenant rights be separated therefrom. Authorized Occupants shall have the same access and use rights to the Common Area as an Owner. All such rights shall be subject to any Rules established by the Board of Trustees.
- (b) The Association shall have nonexclusive easements with the right of access to each Unit, including any Limited Common Areas, to make inspections, to prevent or mitigate damage to Units and to Common Area, and to maintain, repair, replace or effectuate the restoration of the Common Area and those portions of the Unit that the Association is responsible for maintaining which are accessible from such Unit. Such rights shall be exercised only after the notice required in this Declaration. The Association shall have a nonexclusive right to grant permits, licenses, and easements upon, across, over, under, and through the Common Area for purposes necessary for the proper operation of the Condominium Project.

9.2 **Sale, Conveyance, Lease, or Hypothecation of Common Area.** To the extent permitted by law and with the consent of Owners holding sixty-seven percent (67%) of the Undivided Interests present at a meeting called for that purpose, the Association may, sell, convey, lease, or hypothecate Common Area.

9.3 **Public Utilities.** Easements and rights-of-way over the Condominium Project for the installation and maintenance of electricity lines, telephone lines, cable television lines, fiber optics, water lines, gas lines, sanitary sewer lines, drainage facilities, telecommunication fixtures and equipment, utility fixtures and equipment, and such lines, fixtures, or equipment needed or determined by the Board of Trustees to be helpful in serving the Condominium Project, Units, or Unit Owners in the Condominium Project are hereby reserved to the Association, together with the right to grant, alter, and transfer the same; provided, however, such easements and rights-of-way shall not unreasonably interfere with the use of the Common Area and the Units by the Owners or Occupants. The Association shall have the power to grant and convey, in the name of the Association or all of the Owners as their attorney-in-fact, to any Person easements and rights-of-way in, on, over or under the Common Area or Units for the purpose of constructing, erecting, operating, or maintaining lines, cables, wires, wireless transmission or reception equipment, conduits, or other devices for electricity, cable television, power, telecommunications, internet, telephone, public sewers, storm water drains and pipes, water systems, sprinkling systems, water heating and gas lines or pipes and any other public, quasi-public, or private improvements or facilities. Each Owner in accepting the deed to a Unit expressly consents to such easements and rights-of-way and authorizes and appoints the Association as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way. Such Owner and

those claiming by, through or under an Owner agree to execute promptly all such documents and instruments and to do such other things as may be necessary or convenient to affect the same at the request of the Association. However, no easement can be granted pursuant to this paragraph if it would permanently and materially interfere with the use, occupancy or enjoyment by any Owner of such Owner's Unit.

9.4 **Easements for Encroachments.** If any portion of the Common Area encroaches upon any Unit, or if any Unit encroaches upon any other Unit or the Common Area, as a result of the manner in which the Building(s) is constructed or due to settling, shifting, alteration, replacement, repair or restoration by the Association, a valid easement for encroachment and maintenance of such encroachment, shall exist for the life of the structure.

9.5 **Limitation on Easement; Suspension of Owner's Rights.** An Owner's Undivided Interest and right and easement of use and enjoyment concerning the Common Area shall be subject to any other limitation in the Governing Documents and the following:

- (a) The right of the Association to suspend the Owner's or Occupant's right to the use and/or access to Common Areas and any recreational facilities included in the Common Area: (1) for any period during which an Assessment on such Owner's Unit remains unpaid; (2) for a period not exceeding sixty (60) days for any infraction by such Owner of the provisions of this Declaration or any Rule; and (3) for successive sixty (60) day periods if any such infraction is not corrected during any prior sixty (60) day suspension period;
- (b) The right of the Association to impose reasonable limitations on the number of Occupants per Owner who at any given time are permitted to use the Common Area;
- (c) The right of any governmental or quasi-governmental body having jurisdiction over the Condominium Project to access and to have rights of ingress and egress over and across any street, parking areas, walkway or open areas contained within the Common Area for purposes of providing police and fire protection, transporting school children, and providing other governmental or municipal services;
- (d) The right of the Association to reasonably limit or restrict Owner's access and use of certain portions of the Common Area set aside for the functioning of the Association; and
- (e) Any Rule adopted by the Board allowing for an Owner or Occupant to rent a particular part of the Common Area, such as the pool, clubhouse, etc., for a limited time period, and in which instance the Owner or Occupant renting the specific Common Area may restrict access to the Common Area by other Owners, Occupants, and Persons as allowed under the Rules.

9.6 **Views.** Views from a Unit and the Condominium Project are not assured or guaranteed in any way. There is no warranty concerning the preservation of any view or view plane from the Condominium Project and each Owner and Occupant acknowledges and agrees that there are no view easements or view rights appurtenant to the Unit or the Condominium Project.

**ARTICLE 10:
USE LIMITATIONS AND CONDITIONS**

- 10.1 **Rules.** The Association shall have authority to promulgate and enforce such reasonable Rules and procedures as may aid the Association in carrying out any of its functions and to ensure that the Condominium Project is maintained and used in a manner consistent with the interests of the Owners.
- 10.2 **Signs.** The Association may not prohibit but has authority to regulate and impose limitations by Rule as to the time, place and manner of any religious, political or for sale signs placed inside the Unit but visible from outside the Unit. The Association may regulate and restrict signs in the Condominium Project in the Rules, to the extent permitted by law. The term “signs” shall include any type of object (including but not limited to flags, billboards, banners, plaques, A-frames, easel signs, poly-bag signs, corrugated plastic signs, lawn signs, window signs) used to convey a message, symbol, idea, identification, or for any other purpose that signs are typically used, that is placed in, on, or outside of a Unit with the apparent purpose, in whole or in part, of making it visible to people outside of the Unit. Unless and until the Association adopts Rules regulating signs in the Condominium Project, all signs are prohibited except any of the following, which may later be prohibited if set forth in the Rules:
- (a) Signs expressly approved in advance by the Board of Trustees;
 - (b) One “for sale” or “for rent” sign displayed in the window of the Unit, which sign is no larger than three (3) feet by two (2) feet;
 - (c) Signs, such as numbers, identifying the Unit, which may not exceed one (1) square foot in surface area, must be legible from the street, and not more than six (6) feet above the main floor level of the Unit;
 - (d) One “welcome sign” or wreath on the Unit’s front door and/or patio gate; and
 - (e) Signs allowed under applicable state and federal laws, including an American flag displayed in the Unit or Limited Common Area in accordance with the federal Freedom to Display the American Flag Act of 2005 and Utah’s Display of Flag Act (Utah Code § 57-24-101 *et seq.*). Flags, if displayed, must be displayed in accordance with United States Code Title 4, Chapter 1.
- 10.3 **Nuisance.** No noxious or offensive activity shall be conducted in the Condominium Project, nor shall any activity that might be or become an annoyance or nuisance to the Owners or Occupants be permitted to interfere with their rights of quiet enjoyment or increase the rate of any insurance or decrease the value of the Units. No Owner or Occupant shall engage in activity within the Condominium Project in violation of the Governing Documents or any law, ordinance, statute, rule or regulation of any local, county, state or federal body and engaging in such may also subject the Owner to separate or additional fines from those assessed by the Association for the conduct itself. No abusive behavior or language shall be directed to or around any Owner, resident, employee or contractor.

- 10.4 **Smoking.** Smoking is prohibited within the following areas in the Condominium Project: all Units, all Limited Common Areas, the clubhouse, swimming pool, tennis/pickleball courts, barbeque and picnic areas, water features and within twenty-five (25) feet of any and all Buildings, the clubhouse, swimming pool, tennis/pickleball courts, mailboxes, water features and picnic areas. It shall be a nuisance and prohibited to permit or cause any smoke to drift or otherwise enter any Unit or the Limited Common Area of any Unit. The Board of Trustees may adopt Rules further restricting smoking, including non-combustible tobacco products, to certain designated smoking areas within the Common Areas. The Association relies upon the definitions of the terms “e-cigarette” and “smoking” as used in the Utah Indoor Clean Air Act (Utah Code Ann. §§ 26-38-1 *et seq.*) in defining such terms for this Article 10.4.
- 10.5 **Temporary Structures.** No structure or building of a temporary character, including a tent or shack, shall be placed upon the Condominium Project or used therein unless otherwise authorized in this Declaration or approved by the Board of Trustees.
- 10.6 **Parking.** The Association has authority to regulate parking anywhere in the Condominium Project and shall promulgate reasonable rules to govern parking and the use of all paved surfaces in the Common and Limited Common Areas, which rules, and restrictions shall apply to all Owners, Occupants, paved surfaces and parking areas of the Association.
- 10.7 **Commercial and Recreational Vehicles.** The Board of Trustees may adopt Rules regulating the parking, storage, and maintenance or repair of commercial vehicles and recreational vehicles in the Condominium Project, including, but not limited to, the following recreational vehicles: boats, trailers, 4-wheelers, ATV’s, snowmobiles, campers, and motor homes.
- 10.8 **Equipment and Vehicle Maintenance.** Except for emergency automobile maintenance, no repairs of any detached machinery, equipment, or fixtures, including without limitation, motor vehicles, shall be made in the Condominium Project except as may be permitted by the Board of Trustees in the Rules.
- 10.9 **Holiday Decorations.** Subject to Article 10.2 above regarding political and religious signs, the Association may define, regulate and restrict, by Rule, holiday decorations in the Condominium Development, to the extent permitted by law. Unless and until the Board of Trustees adopts Rules regulating holiday decorations, holiday decorations are not permitted.
- 10.10 **Window Covers.** The Board of Trustees may adopt Rules requiring window covers, regulating the type, color, and design of window covers, and requiring prior approval of window coverings before installation. Absent Rules permitting otherwise, only curtains, drapes, shades, shutters, and blinds may be installed as window covers. When closed, such coverings shall not convey a written or iconic message of any sort. No window shall be covered by paint, foil, sheets, reflective film, or similar items.
- 10.11 **External Fixtures.** The Board of Trustees may adopt Rules defining and regulating placement of external fixtures in the Limited Common Areas. Except as provided in the Rules, no external fixtures such as, but not limited to, television, radio and satellite antennas, and dishes, flag poles, solar panels, clotheslines, wiring, air conditioning equipment, water softening or storage equipment, fences, awnings, ornamental screens,

screen doors, porches, patios, balconies, enclosures, sunshades, lighting fixtures, walls, windows, skylights, landscaping and plantings, other than those provided in connection with the original construction of the Condominium Project, shall be constructed, erected, attached or maintained on the Condominium Project without the prior written approval of the Board of Trustees and, if approved, shall be attached and maintained at the sole expense of the Owner.

- 10.12 **Air Space, Drones, and Unmanned Aircraft.** The Association shall have the authority to regulate or to ban by Rule, and if allowed, to impose reasonable requirements on the use of the airspace (all airspace up to public airspace) by anyone over the Property and any structures on the Property. Unless and until Rules allowing and regulating the use of drones or unmanned aircraft of any kind in the Associations air space, they are prohibited.
- 10.13 **Electric Vehicle Charging Stations.** The Association has authority to regulate and impose limitations by Rule on, but may not prohibit, the installation of charging stations and the charging of electric vehicles in the Association, if otherwise allowed by law. All costs associated with an electric vehicle charging station, if allowed and per regulations imposed, shall be the responsibility of the Owner and shall meet applicable health and safety standards and requirements imposed by state and local authorities as well as all other applicable zoning, land use or other ordinances, or land use permits.
- 10.14 **External Laundering; Outside Speakers and Amplifiers.** Unless permitted in the Rules and subject to any regulations therein, no laundering and drying of clothing and other items in and around the Common and Limited Common Areas is permitted. No radio, stereo, loudspeaker, or projection of sound, music, or video of any kind in, around, from or directed into the Common and Limited Common Areas is permitted; nor is any projection of sound permitted from within a Unit that bothers anyone in another Unit.
- 10.15 **Animals.** The Board of Trustees may adopt Rules for the keeping of animals within the Condominium Project, including procedures for qualifying and registering “Assistance Animals, such as “Service Animals,” Emotional Support Animals” and “Service Dogs” as those terms and types of animals are legally described.
- 10.16 **Floor Load.** No item may be attached or placed within a Unit, the weight of which exceeds the “floor load” capacity for which the Unit was designed without the prior written approval of the Association. It shall be the Owner’s responsibility to determine if the item exceeds the floor load capacity for a Unit and the Owner shall present independent, qualified engineering documents to establish to the Board of Trustees satisfaction that the item will not exceed the floor load capacity. The Board of Trustees may require the Owner to pay the costs of an engineer or architect hired by the Association to verify that the Owner is safely within the Unit’s floor load capacity.
- 10.17 **Residential Occupancy.** No Unit may be used for any purpose other than a residential purpose.
- (a) No trade or business may be conducted in or from any Unit unless:
- (1) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell, from outside the residence;

- (2) the business activity conforms to all zoning and legal requirements for the Condominium Project and the business activity;
- (3) the business activity does not involve Persons coming onto the Condominium Project who do not reside in the Condominium Project or solicitation of Occupants or Owners of the Condominium Project;
- (4) the business activity is consistent with the residential character of the Condominium Project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other Occupants of the Condominium Project;
- (5) the business activity is disclosed to the Board of Trustees before business is commenced along with a description of the business activity, a statement of the amount of space required in the Unit for such activity, and a description of any impact on the Condominium Project;
- (6) there is no commercial delivery of packages or mail other than deliveries consistent with typical residential use;
- (7) the business activity will not result in the increase of the cost of any of the Association's insurance;
- (8) all Owners and Occupants of the Unit reside in the Unit in which the business activity is conducted for the entire time any business activity is conducted, (if an entity owns the Unit, all owners of the entity must reside in the Unit, if the Unit is held in the name of a trustee for a trust, the beneficiary must reside in the Unit); and
- (9) the Board's requests for information related to the business as necessary to determine compliance with this paragraph are responded to fully and completely as often as the Board of Trustees shall determine in its discretion.

10.18 **No Subdivision or Timeshare of Units or Recording by Owners of Terms and Conditions.** No Unit shall be split, subdivided, separated or timeshared into two (2) or more Units or property interests (whether temporally or spatially), and no Owner of a Unit shall sell or lease part of a Unit. No subdivision Plat or covenants, conditions, or restrictions shall be recorded by any Owner or other Person with respect to any one Unit. No subdivision Plat or covenants, conditions, or restrictions related to any Unit or the Condominium Project shall be recorded on the Condominium Project unless the Board of Trustees and/or Owners (as required in this Declaration) have first approved the Plat or the proposed covenants, conditions, or restrictions. Any Plat or covenants, conditions, or restrictions recorded in violation of this Article shall be null, void, and of no legal effect.

10.19 **Firearms.** The discharge of firearms within the Condominium Project is strictly prohibited. The term "firearms" includes "B-B" guns, pellet guns, paintball guns, air soft guns, gel guns and other firearms of all types, regardless of size.

10.20 **Garage Sales.** Garage sales, estate sales, rummage sales, or similar sales will not be permitted unless pre-approved by the Board of Trustees. The Board of Trustees may adopt Rules governing such sales.

- 10.21 **Lighting and Security Fixtures.** Permanent or temporary lighting or security fixtures, including deck lighting and cameras, outside of Units shall be allowed only to the extent approved by the Board of Trustees by Rules adopted for that purpose.
- 10.22 **Dumpsters, Trash and Unsightly Items.** The Board of Trustees may adopt Rules regulating Owners and Occupants' use of the dumpsters, including, but not limited to, what items may be placed in dumpsters and their timely disposal of trash and other unsightly items. Only Owners and Occupants may place trash in the dumpsters. All rubbish, debris, unsightly materials, or similar objects of any kind shall be regularly removed from Units and shall not be allowed to accumulate therein or within the Limited Common Areas adjacent to the Unit. Trash and garbage shall be properly and promptly disposed of as provided for in the Rules.
- 10.23 **Variances.** The Board of Trustees may, at its option and in extenuating circumstances, grant variances from the Terms and Conditions set forth in this Article 10 if the Board of Trustees determines in its discretion: (a) either (1) that the Term and Condition would create an unreasonable hardship or burden on an Owner or Occupant, or (2) that a change of circumstances since the recordation of this Declaration has rendered such Term and Condition obsolete and unreasonable to enforce; and (b) that the activity permitted under the variance will not have any financial effect or any other substantial adverse effect on the Owners or Occupants of the Project and is consistent with the high quality of life intended for residents of the Condominium Project. Any such variance shall be unenforceable and without any effect whatsoever unless reduced to writing and signed by the Owner and Association as directed by the Board of Trustees.
- 10.24 **Hazardous Substances.**
- (a) The Owners and Occupants shall comply with applicable Environmental Laws (as defined below), and shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances (as defined below), on or within the Condominium Project, that are not properly possessed, controlled, safeguarded, and disposed of. The Owners and Occupants shall not do, nor allow anyone else to do, anything affecting the Condominium Project that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Condominium Project of small quantities of Hazardous Substances that are generally recognized to be appropriate to the maintenance of a Unit or the Condominium Project.
 - (b) Each Owner and Occupant shall indemnify from all liabilities and losses and defend the Association and each and every other Owner and Occupant against any and all claims and proceedings (whether brought by private party or governmental agency) for bodily injury, property damage, abatement or remediation, environmental damage or impairment, or any other injury or damage resulting from or relating to any Hazardous Substances located under or upon or migrating into, under, from or through the Condominium Project, which the Association or the other Owners or Occupants may incur due to the actions or omissions of an indemnifying Owner or Occupant. The foregoing indemnity shall apply: (1) when the release of the Hazardous Substances was caused by an indemnifying Owner or an Occupant and (2) whether or not the alleged liability is attributable to the

handling, storage, generation, transportation or disposal of Hazardous Substances on the Condominium Project. The obligations of each Owner and Occupant under this Article 10.24 shall survive any subsequent transfers of the Unit (voluntary or otherwise).

- (c) As used in this Article, “Hazardous Substances” are those substances defined as a toxic or hazardous substance by environmental law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this Article, “Environmental Law” means federal laws and laws of the jurisdiction where the Condominium Project is located that relate to health, safety, or environmental protection.

ARTICLE 11: INSURANCE

- 11.1 **Insurance Requirement.** The Association shall obtain insurance as required in this Declaration and as required by applicable law. The Association may obtain insurance that provides more or additional coverage than the insurance required in this Declaration. Different policies may be obtained from different insurance carriers and standalone policies may be purchased instead of or in addition to embedded, included coverage, or endorsements to other policies.
- 11.2 **Annual Insurance Report.** The Board of Trustees shall obtain a written status report from the Association’s insurance broker or agent and, in a given year, obtain an independent insurance report from an independent and experienced insurance broker, agent, or consultant (who may not be the insurance provider/agent/broker used by the Association), with specific knowledge and experience in the community association insurance industry, setting forth: (a) a summary description of the insurance coverage obtained by the Association, including the dollar amounts of any such coverage, and any material exceptions, exclusions, and limitations on such coverage; (b) whether, in the opinion of such broker or consultant, the insurance coverage in effect for the Association complies with the requirements of this Declaration and the law; (c) a description of any earthquake insurance and material exclusions and limitations for that coverage and if no earthquake insurance is obtained, a conspicuous clear statement in both bold and uppercase letters stating: “NO EARTHQUAKE INSURANCE HAS BEEN OBTAINED BY THE ASSOCIATION”; and (d) a description of any flood insurance and material exclusions and limitations for that coverage and if no flood insurance is obtained, a conspicuous clear statement in both bold and uppercase letters stating: “NO FLOOD INSURANCE HAS BEEN OBTAINED BY THE ASSOCIATION.” The report shall also set forth any recommendations or suggestions from the insurance professional regarding current policy provisions, deductibles, exceptions, exclusions, and for additional insurance suggested or recommended for the protection of the Owners in light of the insurance then available and the best practices with respect to other similar projects. If obtained, the most recent annual insurance report shall be distributed to the Owners at or before the annual meeting of the Association and shall be provided to any Owner at any other time upon request. The report will be distributed to Owners at the annual meeting and posted on the Association website. A copy shall also be emailed to

the Owners, and mailed to Owners who have requested the same, within thirty (30) days of the annual meeting.

11.3 **Property Insurance.**

(a) Hazard Insurance.

(1) Blanket Policy of Property Insurance. The Association shall maintain a blanket policy of property insurance covering the entire Condominium Project, including the Common Area and all Buildings including all Units, fixtures, and Building service equipment.

(i) The blanket policy shall exclude land and other items not normally and reasonably covered by such policies. The blanket policy shall be an “all in” or “all inclusive” insurance as those terms are used in the insurance industry and shall include insurance for any fixture, improvement, or betterment installed in or to the Unit or any Limited Common Areas or otherwise permanently part of or affixed to Common Areas, Units, or Limited Common Areas, including but not limited to, floor coverings, cabinets, light fixtures, electrical fixtures, heating and plumbing fixtures, paint, wall coverings, windows.

(ii) At a minimum, the blanket policy shall afford protection against loss or damage by: (1) fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, and theft; and (2) all perils normally covered by “special form” property coverage.

(iii) The blanket or guaranteed replacement cost policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all property covered by such policy (including the Units) at the time the insurance is purchased and at each renewal date. The actual replacement cost of the property shall be determined by using methods generally accepted in the insurance industry.

(iv) The blanket policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement under which the insurer agrees to replace the insurable property regardless of the cost or (2) a Replacement Cost Endorsement under which the insurer agrees to pay up to one hundred percent (100%) of the property’s insurable replacement cost but not more. If the policy includes a coinsurance clause, it must include an Agreed Amount Endorsement which must waive or eliminate the requirement for coinsurance.

(v) Each property policy that the Association is required to maintain shall also contain or provide for the following: (A) “Inflation Guard Endorsement,” if available; (B) “Building Ordinance or Law Endorsement,” (the endorsement must provide for contingent

liability from the operation of building laws, demolition costs, and increased costs of reconstruction); and (C) “Equipment Breakdown,” if the Condominium Project has central heating or cooling or other equipment or other applicable fixtures, equipment, or installations, which shall provide that the insurer’s minimum liability per accident at least equals the lesser of two million dollars (\$2,000,000) or the insurable value of the building containing the equipment.

- (b) Owner Responsibility for Payment of Deductible. If a loss occurs that is covered by a property insurance policy in the name of the Association and another property insurance policy in the name of an Owner:
- (1) The Association’s policy provides primary insurance coverage;
 - (2) Notwithstanding SubArticle 11.3(b)(1) and subject to SubArticle 11.3(b)(3):
 - (i) the Owner is responsible for the Association’s policy deductible; and
 - (ii) building property coverage, often referred to as Coverage A, of the Owner’s policy, if any, applies to that portion of the loss attributable to the Association’s policy deductible.
 - (3) An Owner who owns a Unit that has suffered Unit Damage as part of a Covered Loss is responsible for an amount calculated by applying the Unit Damage Percentage for that Unit to the amount of the deductible under the Association’s property insurance policy.
 - (i) If an Owner does not pay the amount required under sub-article Article 11.3(b)(3) within thirty (30) days after substantial completion of the repairs to, as applicable, the Unit or the Limited Common Area appurtenant to the Unit, the Association may levy an Assessment against the Owner for that amount.
 - (ii) As used in this sub-article (3):
 - (A) “**Covered Loss**” means a loss, resulting from a single event or occurrence that is covered by the Association’s property insurance policy.
 - (B) “**Unit Damage**” means damage to any combination of a Unit or a Limited Common Area appurtenant to a Unit.
 - (C) “**Unit Damage Percentage**” means the percentage of total damage resulting in a Covered Loss that is attributable to Unit Damage.
- (c) Flood Insurance.
- (1) If any part of the Condominium Project is or comes to be situated in a Special Flood Hazard Area as designated on a Flood Insurance Rate Map, a

policy of flood insurance shall be maintained covering the Condominium Project or, at a minimum, that portion of the Condominium Project located within the Special Flood Hazard Area. That policy shall cover any machinery and equipment that are not part of a Building and all Common Area within the Condominium Project (“Insurable Property”) in an amount deemed appropriate and reasonable in relation to what insurance is available at an affordable cost.

- (2) If the Condominium Project is not situated in a Special Flood Hazard Area, the Association may nonetheless, at the discretion of the Board of Trustees, purchase flood insurance to cover water and flooding perils not otherwise covered by blanket property insurance.
- (3) Earthquake Insurance. The Association may purchase earthquake insurance as the Board of Trustees deems appropriate. If the Board of Trustees elects not to purchase earthquake insurance, the Owners may call a special meeting for the purpose of voting on whether the Association should purchase earthquake insurance. A vote of Owners holding at least fifty-one percent (51%) of the of the Undivided Interests of the Association must vote in favor of purchasing earthquake insurance to override the Board’s prior decision. If the Owners at the meeting vote to purchase earthquake insurance, the Association shall purchase earthquake insurance within sixty (60) days of the vote in an amount deemed appropriate and reasonable in relation to what insurance is available at the cost approved by the Owners as part of their vote regarding the same.
- (d) Association’s Obligation to Segregate Property Insurance Deductible. The Association shall set aside the amount of the property insurance deductible. The Association may keep those funds in a segregated bank account or financial account (such as the purchase of a certificate of deposit) in an amount equal to the Association’s property insurance policy deductible or ten thousand dollars (\$10,000.00), whichever is less, unless some other amount is required by law – which shall be complied with. This requirement shall not apply to any earthquake or flood insurance deductible.
- (e) Association’s Right to Not Tender Claims That Are Under the Deductible. If, in the exercise of its business judgment, the Board of Trustees determines that a covered loss is likely not to exceed the Association’s property insurance policy deductible, and until it becomes apparent the covered loss exceeds the Association’s property insurance deductible, and a claim is submitted to the Association’s property insurance insurer: (1) the Owner’s policy is considered the policy for primary coverage for any loss to the Owner’s Unit, to the amount of the Association’s policy deductible; (2) the Association is responsible for any loss to any Common Area; (3) an Owner who does not have a policy to cover the damage to that Owner’s Unit is responsible for that damage and the Association may, as provided in Article 11.3(b)(3)(i), recover any payments the Association makes to remediate that Unit; and (4) the Association need not tender the claim to the Association’s insurer.

- (f) Notice Requirement for Deductible. The Association shall provide notice to each Owner of the Owner's obligation under sub-article 11.3(b) for the Association's policy deductible and of any change in the amount of the deductible. If the Association fails to provide notice of the initial deductible, it shall be responsible for the entire deductible in case of any loss. If the Association fails to provide notice of any increase in the deductible, it shall be responsible for paying any increased amount that would otherwise have been assessed to the Owner. The failure to provide notice shall not invalidate or affect any other provision in this Declaration.
- 11.4 **Comprehensive General Liability (CGL) Insurance.** The Association shall obtain CGL insurance insuring the Association, the agents and employees of the Association, and the Owners against liability incident to the use, repair, replacement, maintenance, or ownership of the Common Area and the Owner's membership in the Association. The coverage limits under such policy shall be determined by the Board of Trustees but shall not be less than one million dollars (\$1,000,000.00) covering all claims for death of or injury to any one Person or property damage in any single occurrence. Such insurance shall contain a Severability of Interest Endorsement or equivalent coverage which would preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or another Owner.
- 11.5 **Director's and Officer's Insurance.** The Association shall obtain Directors' and Officers' liability insurance protecting the Board of Trustees, the officers, members of committees formed by the Board of Trustees, and the Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Governing Documents, and breach of contract (if available). To the extent reasonably available, this policy shall: (a) include coverage for volunteers and employees, (b) include coverage for monetary and non-monetary claims, and (c) provide for the coverage of claims made under any fair housing act or similar statute or that are based on any form of discrimination or civil rights claims. At the discretion of the Board of Trustees, the policy may also include coverage for any Manager and any employees of the Manager and may provide that such coverage is secondary to any other policy that covers the Manager or any employees of the Manager.
- 11.6 **Insurance Coverage for Theft and Embezzlement of Association Funds.** The Association shall obtain insurance covering the theft or embezzlement of funds that shall: (a) provide coverage for an amount of not less than the sum of three (3) months Annual Assessments in addition to the prior calendar year's highest monthly balance on all operating and reserve funds; and (b) provide coverage for theft or embezzlement of funds by: (1) Officers and Board of Trustees Members of the Association (2) employees and volunteers of the Association, (3) any Manager of the Association, and (4) officers, directors, and employees of any Manager of the Association.
- 11.7 **Workers' Compensation Insurance.** The Association shall purchase and maintain in effect workers' compensation insurance for all employees of the Association to the extent that such insurance is required by law and may purchase workers compensation insurance even if the Association has no employees, as the Board of Trustees deems appropriate.

- 11.8 **Certificates.** Any insurer that has issued an insurance policy to the Association shall issue a certificate of insurance to the Association and upon written request, to any Owner or Lender.
- 11.9 **Named Insured.** The named insured under any policy of insurance shall be the Association. Each Owner shall also be an insured under all property and CGL insurance policies and the policy of insurance may also name other insureds, such as the Manager, as additional named insureds, at the discretion of the Board of Trustees.
- 11.10 **Right to Negotiate All Claims and Losses and Receive Proceeds.** The Association shall have the right to negotiate all claims and losses and to receive any proceeds from the Association's insurance policies. Insurance proceeds for a loss under the Association's property insurance policy shall be payable to an Insurance Trustee if one is designated, or to the Association, and shall not be payable to a holder of a security interest. An Insurance Trustee, if any is appointed, or the Association shall hold any insurance proceeds in trust for the Association, Owners, and lien holders. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, if the property is to be repaired and restored as provided for in this Declaration. After any repair or restoration is complete and if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the Association. If the property is not to be repaired or restored, then any proceeds remaining after paying for any necessary action related to the property shall be distributed to the Owners and lien holders, as their interests remain about the Units. The cost of repair or replacement of any Unit in excess of insurance proceeds and reserves is a Common Expense to the extent the Association is required under this Declaration or the law to provide insurance coverage for the Unit. The cost of repair or replacement of any Common Area in excess of insurance proceeds and reserves is a Common Expense. Each Owner hereby appoints the Association, or any Insurance Trustee, as attorney-in-fact for the purpose of negotiating all losses related thereto, including: the collection, receipt of, and appropriate disposition of all insurance proceeds; the execution of releases of liability; and the execution of all documents and the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors or assigns of an Owner.
- 11.11 **Insurance Trustee.** At the discretion of the Board of Trustees or upon written request executed by Owners holding fifty-one percent (51%) or more of the Undivided Interests, the Board of Trustees shall hire and appoint an insurance trustee ("Insurance Trustee"), with whom the Association shall enter into an insurance trust agreement, for the purpose of taking such action as the Owners or Board of Trustees (as the case may be) shall require related to a loss and receipt or potential receipt of insurance proceeds.
- 11.12 **Owner Act Cannot Void Coverage Under Any Policy.** Unless an Owner is acting within the scope of the Owner's authority on behalf of the Association and under direct authorization of the Association to terminate an insurance policy, an Owner's act or omission may not void an insurance policy or be a condition to recovery under a policy.
- 11.13 **Waiver of Subrogation against Owners and the Association.** All property and CGL policies must contain a waiver of subrogation by the insurer as to any claims against the

Association, the Owners, any Person residing with an Owner if an Owner resides in the Unit, and the Association's agents and employees.

- 11.14 **Right of Action.** Nothing in this Declaration shall prevent an Owner suffering a loss as a result of damage to property from asserting a claim, either directly or through subrogation, for the loss against a Person at fault for the loss.
- 11.15 **Applicable Law.** This Declaration is specifically subjecting the Association to the insurance requirements and provisions in Utah Code Ann. § 57-8-43, and any amendments thereto and hereafter enacted by law. It is the intent of this provision that any future changes to the insurance law applicable to condominium associations shall apply to this Association.

ARTICLE 12: DESTRUCTION OF IMPROVEMENTS

- 12.1 **Reconstruction.** In the event of partial or total destruction of a Building, the Association shall promptly take the following actions:
- (a) Ascertain the cost of reconstruction by obtaining fixed price bids from at least two (2) reputable contractors, including the obligation to obtain performance and lien payment bonds. If the Board of Trustees in good faith determines that none of the bids submitted under this Article reasonably reflect the anticipated reconstruction costs, the Board of Trustees shall continue to attempt to obtain an additional bid that it determines reasonably reflects such costs. Such determination shall be made by the Board of Trustees as soon as possible.
 - (b) The Board of Trustees, or any Insurance Trustee if one is appointed, shall determine and liquidate the amount of insurance proceeds, if any, or establish a procedure by which any insurance proceeds shall be available for either a cash payment or for reconstruction.
 - (c) Engage the services of a reputable licensed architect to advise and consult with the Board of Trustees or any Insurance Trustee on all actions and decisions necessary under this Article.
 - (d) If an appraisal of any or all Units is required under this Article, the Board of Trustees shall select the appraiser to perform the necessary appraisal ("initial appraisal") which appraisal shall be final and not subject to challenge by any Owner for purposes of this Article, subject to Article 12.1(e) below.
 - (e) An Owner can request a "second appraisal" within 10 calendar days of the date the initial appraised value is publicized by the Board of Trustees by providing written notice to the Board of Trustees. Any such notice must name the Owner's choice of a licensed appraiser to conduct the second appraisal. The Board of Trustees' may approve the appraiser suggested by the Owner, but if not approved, the appraiser who performed the initial appraisal and the appraiser suggested by the Owner shall agree upon and appoint a third licensed appraiser to conduct the second appraisal. The full cost of a second appraisal shall be paid by the Owner who requested it. The second appraisal must be completed within 15 business

days from the date the Owner's suggested appraiser is approved by the Board of Trustees in writing or another appraiser is otherwise appointed pursuant to this paragraph. If a second appraisal is obtained pursuant to this paragraph, the final appraised value shall be the average of the initial and second appraisals.

12.2 **Insurance Proceeds Sufficient for Reconstruction.** In case of fire or any other disaster and if insurance proceeds are sufficient to reconstruct the Building and all Units suffering damage therein, then the insurance proceeds shall be applied to reconstruct the Building and any Units suffering damage. As used herein, reconstructing the Building shall mean restoring the Building and Units to substantially the same condition in which they existed prior to the fire or other disaster, with each Unit and the common elements having the same vertical and horizontal boundaries as before.

12.3 **Insurance Proceeds Insufficient for Reconstruction.** If insurance proceeds will be insufficient for reconstruction, the following shall apply:

- (a) If the cost of reconstruction is equal to or less than twenty-five percent (25%) of the estimated fair market value of all of the Units in the Condominium Project (prior to the damage and destruction), then the Association shall proceed forward with reconstruction applying any insurance proceeds as provided for in Article 12.2. The cost of reconstruction in excess of insurance proceeds and reserves shall be a Common Expense.
- (b) If the cost of reconstruction is greater than twenty-five percent (25%) of the estimated fair market value of all of the Units in the Condominium Project (prior to the damage and destruction), then the Board of Trustees shall call a special meeting of the Owners for the purpose of voting on whether to reconstruct or not.
 - (1) Unless Owners holding seventy-five percent (75%) or more of the Undivided Interests vote to not proceed with reconstruction at such meeting, the Association shall proceed with reconstruction as provided for in Article 12.3(a).
 - (2) If, however, the Owners, by a vote at such meeting of not less than seventy-five percent (75%) of the Undivided Interests, decide not to proceed with such reconstruction:
 - (i) The Property shall be deemed to be owned in common by the Unit Owners;
 - (ii) The Undivided Interest in the Property owned in common which shall appertain to each Owner shall be the Owners' Undivided Interest as determined in this Declaration;
 - (iii) Any liens affecting any of the Units shall be deemed to be transferred in accordance with the existing priorities to the Undivided Interest of the Owners in the Property; and
 - (iv) The Property shall be subject to an action for partition by any Owner, in which event the net proceeds of sale, together with the net proceeds of the insurance, if any, shall be considered as one fund and shall be divided among all the Owners in a percentage equal to the percentage of the Undivided Interest owned by each Owner in the Property, after first

paying out the respective shares of each Owner, to the extent sufficient, all liens on the Undivided Interest in the Property owned by each Owner.

**ARTICLE 13:
EMINENT DOMAIN**

- 13.1 **Total Taking of a Unit.** If a Unit is taken by eminent domain or sold under threat thereof, leaving the Owner with a remnant that may not be practically or lawfully used for any purpose permitted by this Declaration, the award must compensate the Owner for the Owner's Unit and Undivided Interest in the Common Area, regardless of whether any Common Area is taken. Upon such a taking, unless the decree otherwise provides, that Unit's Undivided Interest in the Common Area will automatically be reallocated to the remaining Units in proportion to their respective interests immediately before the taking. Upon such a taking, the Association shall prepare, execute and record an amendment to the Declaration that accomplishes the adjustment required for this Article. Any remnant of a Unit remaining after part of a Unit is taken becomes part of the Common Area.
- 13.2 **Partial Taking of a Unit.** Except as provided in Article 13.1, if part of a Unit is taken by eminent domain, or sold under threat thereof, so that such Unit may still be practically and lawfully used under this Declaration, the award must compensate the Owner for the reduction in the value of the Owner's Unit and Undivided Interest in the Common Area, regardless of whether any Common Area is taken. Upon such a taking, unless the decree otherwise provides, that Unit's Undivided Interest in the Common Area will remain the same, but if the decree provides for a reduction of the Undivided Interest for such Unit, the reduced amount will automatically be reallocated to that Unit and the remaining Units in proportion to their respective Undivided Interests immediately before the taking, with the partially acquired Unit participating in the reallocation on the basis of its reduced Undivided Interest.
- 13.3 **Taking of Limited Common Area.** If the portion of the Condominium Project taken by eminent domain, or sold under threat thereof, is comprised of or includes any Limited Common Area or portion thereof, the portion of the award attributable to the Limited Common Area so taken will be divided among the Owners of the Units to which such Limited Common Area was allocated or assigned at the time of the acquisition.
- 13.4 **Taking of Common Area.** If the portion of the Condominium Project taken by eminent domain, or sold under threat thereof, is not comprised of or does not include any Unit or Limited Common Area, the Board of Trustees shall, as soon as practicable, cause the award to be utilized for the purpose of repairing or restoring that area in the Condominium Project adjacent to the taking, and the portion of the award not used for restoration will be added to the general funds of the Association.
- 13.5 **Taking of Entire Condominium Project.** In the event the Condominium Project, in its entirety, is taken by eminent domain, or sold under threat thereof, the Condominium Project is terminated, and the provisions related thereto in this Declaration will apply.
- 13.6 **Priority and Power of Attorney.** Nothing contained in this Article 13 shall entitle an Owner to priority over any Lender under a lien encumbering the Owner's Unit as to any portion of any condemnation award allocated to such Unit. Each Owner hereby appoints the Association as attorney-in-fact for the purpose of negotiations and settlement with the

condemning authority for the acquisition of the Common Area, or any part thereof. If the taking involves all or part of any Unit or the Common Area or Limited Common Area, the award or proceeds will be payable to the Association for the use and benefit of the Owners and their Lenders as their interests may appear. This power-of-attorney is coupled with an interest, to be irrevocable, and binds any heirs, personal representatives, successors or assigns of an Owner.

ARTICLE 14:

TERMINATION OF CONDOMINIUM PROJECT OR SALE OF PROPERTY

- 14.1 **Required Vote.** The Condominium Project may be removed from the provisions of the Act, terminated, and/or sold by approval of Owners holding at least sixty-seven percent (67%) of the Undivided Interests or as otherwise provided in Article 13 and in compliance with any other applicable laws.
- 14.2 **Sale of Condominium Project Following Termination.** A termination agreement may provide that the entire Condominium Project shall be sold following termination. If, pursuant to such agreement, any real estate in the Condominium Project is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.
- 14.3 **Sale of Condominium Project Without Termination.** Pursuant to and as provided for in the Act, the Unit Owners may, by an affirmative vote of sixty-seven percent (67%) of such Unit Owners, at a meeting of Unit Owners duly called for such purpose, elect to sell, or otherwise dispose of the Property either in conjunction with the termination of the Condominium Project or not. Such action shall be binding upon all Unit Owners, and it shall thereupon become the duty of every Unit Owner to execute and deliver such instruments and to perform all acts in manner and form necessary to affect the sale.
- 14.4 **Sale Agreement.** An agreement to sell the Condominium Project must be evidenced by the execution or ratification of a sale agreement, in the same manner as a deed, by the requisite number of Owners. The sale agreement must specify a date after which the agreement will be void unless it is recorded before that date. A sale agreement, including all ratifications of such termination agreement, becomes effective when it is recorded in the records of the County Recorder in Salt Lake County, Utah.
- 14.5 **Association Duties.** The Association, on behalf of the Owners, may contract for the sale of real estate in the Condominium Project on the termination of the Condominium Project or related to the approval of the sale of the Condominium Project pursuant to Articles 14.2 and 14.3. The contract is not binding on the Owners until approved pursuant to the provisions in this Article 14. If any real estate in the Condominium Project is to be sold, immediately upon approval of the sale of the Property by the Owners or the Approval of the Owners of Termination of the Condominium Project, title to that real estate shall immediately vest in the Association as trustee for all Owners. Thereafter, the Association has all powers necessary and appropriate to affect the sale. Until the sale has been concluded and the proceeds of the sale distributed, the Association continues in existence with all powers it had notwithstanding any termination. Unless otherwise specified in a termination agreement, as long as the Association holds title to the real estate, each Owner and his or her successors in interest have an exclusive right to occupancy of the

portion of the real estate that formerly constituted their Unit in accordance with the terms of this Declaration. During the period of that occupancy right, each Owner and his or her successors in interest remain liable for all Assessments and other obligations imposed on Owners by this Declaration.

- 14.6 **Proceeds of Sale.** The proceeds of any sale of real estate or assets of the Association shall be held by the Association as trustee for Owners and Lenders as their interests may appear. Proceeds of the sale shall be distributed to Owners and Lenders as their interests may appear, based on the relative value of each Unit. The interest of any Owner in such proceeds shall not be distributed to such Owner except upon the prior payment in full of any Assessment lien or lien of a Lender encumbering such proceeds. Following termination, Lenders holding notes on the Units that were recorded before termination may enforce those liens in the same manner as any lien holder. The value of each Unit for purposes of distributing proceeds shall be determined by an appraisal of each Unit, conducted by an independent appraiser selected by the Board of Trustees. If any Owner disputes the appraised amount, the Owner shall notify the Association of the dispute within ten (10) days of receiving notice of the value of that Owner's unit. Upon timely notice of a dispute, the Owner shall select an appraiser who shall jointly with the Association's appraiser select a third appraiser to appraise the Unit. That appraisal shall be final as to the value of the Unit, regardless of whether it is lower or higher than the original appraisal. The Owner shall pay for the final appraisal.
- 14.7 **Allocation upon Termination or Sale.** Unless provided otherwise herein, in a termination agreement, or in an approved contract for the sale of the Property, upon any liquidation or termination of all or part of the Condominium Project, the Association shall represent the Owners in any proceedings, negotiations, settlements, or agreements related thereto. Each Owner hereby appoints the Association as attorney-in-fact for such purpose, including the allocation of any losses, awards, or proceeds resulting from such termination or liquidation. Any proceeds generated by such a termination or liquidation must be made payable to the Association, which shall hold such proceeds for the benefit of the Owners and their Lenders.

ARTICLE 15: AMENDMENTS

- 15.1 **General Amendment Requirements.** Except as otherwise provided herein, this Declaration may be amended by the affirmative approval of Owners holding Undivided Interests totaling sixty-seven percent (67%) of the total Undivided Interest. The approval required to amend the Declaration may be obtained by ballot, vote, or any other means allowed by law. The approval of any one Owner of a Unit is sufficient if there are multiple Owners of the Unit.
- 15.2 **Scope of Amendments.** This Declaration may be amended or restated in whole or in part to add new rights, restrictions, and obligations, or to remove, modify or replace existing rights, restrictions, and obligations. The right to amend shall be broadly construed to permit any change to the rights, restrictions, obligations, and other terms in the Declaration.

- 15.3 **Execution and Effective Date of Amendments.** An amendment that has been adopted as provided herein shall be executed by the Board of Trustees, through its agent, who shall certify that the amendment has been approved and adopted and that the procedures and requirements necessary to amend the Declaration have been complied with to the best of the Board's knowledge. The amendment shall be effective when it is recorded in the office of the County Recorder of Salt Lake County, Utah.
- 15.4 **Changes to Plat or Boundaries of the Association.** The Association may adopt an amended Plat, supplemental Plat, correction to the Plat, or boundary agreement related to any Unit or Units upon the affirmative approval of Owners holding Undivided Interests totaling no less than sixty-seven percent (67%) of the total Undivided Interest and any Owner who owns any Unit in which the boundary is directly affected. Any Plat amendment, supplementation, or correction may make material changes to the existing or prior Plat including the addition or removal of amenities, increasing the size of Units, deleting, adding, or modifying Common Area or Limited Common Area, or other changes in the layout of the Condominium Project. If the Plat amendment is solely to effectuate the approval of a Material Change to the Condominium Project (that has been approved by the number of Owners required in this Declaration), no additional approval shall be required for the amendment of the Plat. If any such amendment affects any boundary of a Unit or Limited Common Area, that Unit Owner must consent. If the approval required herein, or as otherwise provided in this Declaration, is obtained, each and every Owner: (a) shall sign, consent to, and execute any further documents required for the finalization, recording, and/or governmental approval of any such document regardless of whether they approved of or consented to the change in the Plat; and (b) grants the Association power of attorney to sign necessary documents on that Owner's behalf as necessary for the agreement, amendment, or correction. The Board of Trustees may, without the approval of the Owners, agree to any boundary agreement on any Common Area boundary of the Association.
- 15.5 **Amendment to Conform to Law.** The Board of Trustees may, without the approval of the Owners, amend this Declaration to conform the Declaration to any applicable legal requirements otherwise applicable to the Association, but only to the extent necessary to eliminate any conflict with the law, to add provisions required by law, or to add provisions that embody rights or obligations otherwise binding on the applicable parties as a matter of law. This procedure may also be used to change the Declaration to add or conform to any requirements necessary for Owners to obtain government insured or guaranteed financing such as through the Department of Veterans Affairs, the Department of Housing and Urban Development or FNMA, or similar programs or to comply with any directive of any federal, state, or local government agency. The following procedures and requirements must be complied with for any such amendment:
- (a) The Association must obtain from an attorney who has significant experience and a regular practice in area of Community Association law and who may be the Association's current counsel, a written opinion explaining in detail and opining that the proposed amendment may be sought pursuant to this Article 15.5;
 - (b) A majority of the members of the Board of Trustees must agree to the Amendment at the time it is recorded;

- (c) The Board of Trustees must provide to the Owners: (1) the proposed amendment instrument; (2) the language of this Article 15.5 of the Declaration; (3) the law that conflicts with the existing Declaration language or the provisions that must be complied with to permit owners to obtain financing; (4) the attorney opinion letter required for the amendment; and (5) a notice in which the Association (i) notifies the Owner that it intends to amend the Declaration pursuant to this Article 15.5, (ii) provides the Owner a right to object to the amendment within thirty (30) days, and (iii) provides instructions on how, when, and where to properly make the objection. The Board of Trustees may include further explanation, information, and recommendations regarding the proposed amendment in the information provided to the Owners;
- (d) Within forty-five (45) days after providing Owners the notice and information required by this Article 15.5, unless Owners holding more than thirty percent (30%) of the Undivided Interests have objected to the amendment in a written notice to the Association, the Board of Trustees is authorized to sign and record the amendment; and
- (e) Having otherwise complied with all of the requirements of this Article 15.5, the Board of Trustees Members shall each sign the amendment instrument verifying that this Article 15.5 has been complied with to the best of their knowledge and that Owners have received the notice required in this Article 15.5. The amendment shall then be effective upon the recording of the instrument in the office of the County Recorder of Salt Lake County.

15.6 **Consent of Two-Thirds Owners to Alter Undivided Interests.** Notwithstanding anything to the contrary herein, the consent of sixty-seven percent (67%) of the Owners' Undivided Interest shall be required to alter any Undivided Interest.

ARTICLE 16:

INTERPRETATION, CONSTRUCTION, AND APPLICATION OF DECLARATION

- 16.1 **No Waiver.** Failure by the Association or by any Owner to enforce any Term and Condition in any certain instance or on any particular occasion shall not be deemed a waiver of such right of enforcement as to that breach and any such future breach of the same or any other Term and Condition.
- 16.2 **Conflicting Provisions.** In the case of any conflict between the Governing Documents, the order of priority from the highest to the lowest shall be the Declaration, the Articles, the Bylaws, and then the Rules. The Declaration shall take priority over the Plat.
- 16.3 **Interpretation of Declaration and Applicability of the Act.** The Condominium Project shall be governed by the Act, except where (in compliance with the Act) the Association has included specific provisions in this Declaration that legally vary, supersede, or supplement the Act, in which event such specific provisions of this Declaration that are contrary to the Act shall govern the Condominium Project to the extent allowed by the Act. In the case of any conflict between this Declaration and the Act, to the extent the Act does not legally allow this Declaration to contain provisions contrary to the Act, the Act shall govern and this Declaration shall be deemed modified accordingly, but only to the extent necessary to come into compliance with the Act.

- 16.4 **Cumulative Remedies.** All rights, options, and remedies of the Association and the Owners in the Governing Documents are cumulative, and none shall be exclusive of any other, and the Association and the Owners shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief that may be provided by law simultaneously, consecutively, or alternatively.
- 16.5 **Severability.** Invalidation of any one or a portion of the Terms and Conditions by judgment or court order shall in no way affect any other Terms and Conditions, all of which shall remain in full force and effect.
- 16.6 **Construction.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of a residential community and for the maintenance of the Condominium Project. The article and Article headings have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction. References in this Declaration to article and Article numbers, unless otherwise expressly provided, are to the article and Article in this Declaration. To the extent permitted by law, the provisions of the Governing Documents shall not be interpreted for or against or strictly for or against the Association, any Owner, or any other Person subject to their terms.
- 16.7 **Applicable Law.** This Association is specifically made subject to the Act and the law as it is constituted and exists at the time this Declaration is recorded. Amendments to the Act after the date of recording of this Declaration shall not be applicable to the Association or the Condominium Project unless they are applicable as a matter of law, this Declaration expressly states that such amendments shall be applicable, or the Association makes those amendments applicable by amendment to the Declaration.
- 16.8 **Gender and Number.** Whenever the context of the Governing Documents require, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and the neuter, and vice versa.
- 16.9 **Effect of Declaration.** This Declaration is made for the purposes set forth in the recitals in this Declaration, and the Association makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances, regulations and the like applicable thereto. The Association shall have no liability whatsoever if any Term and Condition is determined to be unenforceable in whole or in part for any reason.
- 16.10 **Joint and Several Liability.** The Owner's Unit's Occupants and Tenants are all obligated to abide by the Association's Governing Documents to the same extent as the Owner and the Owner and Owner's tenants can be held jointly and severally liable for assessments; violations of the Governing Documents and resulting fines, penalties, attorney's fees and costs of suit; loss of voting and Common Area use privileges, and all other damages incurred by the Association to the fullest extent allowed by the Governing Documents and at law and an Owner who rents his/her/its Unit shall notify Owner's occupants and contract with Owner's tenants accordingly.

**ARTICLE 17:
NOTICE**

17.1 **Notices.** Any notice to be given to an Owner, a Lender, or the Association under the provisions of the Governing Documents shall be in writing and shall be delivered as follows:

(a) Notice to an Owner from the Association.

- (1) Notice to an Owner shall be effective upon the satisfaction of any of the following delivery methods:
 - (i) By a written notice delivered personally to the Owner, which shall be effective upon delivery.
 - (ii) By a written notice placed in the first-class United States mail, postage prepaid, to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice, or if no such address shall have been furnished, then to the street address of such Owner's Unit. Unless otherwise provided by law, such as provided in Utah Code Ann. § 16-6a-103(4), any notice so deposited in the mail shall be deemed effective five (5) days after such deposit.
 - (iii) By Electronic Transmission to an Owner which requires at least two of the following:
 - (A) An email that is sent to an email address provided by the Owner for the purpose of Association communications; or an email sent to an email address from which the Owner has communicated related to Association matters, and so long as no indication is received that the email may not have been delivered. Unless otherwise provided by law, any notice sent by email shall be deemed effective when received or five (5) days after it is sent, whichever occurs first;
 - (B) By facsimile (whether to a machine or to an electronic receiving unit) to an Owner that is sent to a facsimile number provided by the Owner for the purpose of Association communications and so long as no indication is received that the facsimile may not have been delivered. Unless otherwise provided by law, any notice sent by facsimile shall be deemed effective when received or five (5) days after it is sent, whichever occurs first; or
 - (C) By text message to a phone number provided by the Owner for the purpose of Association communications; or a phone number from which the Owner has communicated related to Association matters, and so long as no indication is received that the text message may not have been delivered. Unless otherwise provided by law, any notice sent by text message shall be deemed effective when received or five (5) days after it is sent, whichever occurs first.

- (iv) By any other method that is fair and reasonable as provided for in the Act or otherwise provided for by law.
 - (2) Notwithstanding sub-section (1) of this Article 17.1(a), the Association shall send all notices by U.S. Mail if an Owner, in writing, demands that the Association send all notices by mail.
 - (3) In the case of co-Owners, notice to one of the co-Owners is effective as notice to all such co-Owners. The Association shall not be required to give more than one notice per Unit, whether electronic or not. In case any two (2) co-Owners send conflicting notice demands, notice shall be proper and effective if mailed by first-class mail to the Unit.
 - (4) In the case of posting a notice on the Unit, when permitted, such posting is effective when posted on the front or primary access door to the Unit and any such posting may be removed by the Association the sooner of either (a) two (2) days after the event or action for which notice was given or (b) ten (10) days after the posting.
- (b) Special Notice Prior to Association Entry into a Unit.
- (1) In the case of an emergency involving the potential loss of life, the Association's agent or representative may enter the Unit immediately and without any notice.
 - (2) In the case of any emergency involving immediate and substantial damage to the Common Areas or to another Unit, before entering a Unit the Association shall: (i) knock on the door and attempt to obtain permission to enter from an Occupant or Owner in the Unit; (ii) if no one answers the knocking, loudly identify who is knocking and state that the Person identified is going to enter the Unit on behalf of the Association, then wait one minute; and (iii) where practicable under the circumstances, attempt to call the Owner or any Occupant prior to entry to inform them of the entry.
 - (3) If the Association enters a Unit for any purpose permitted in this Declaration other than those identified in the prior two paragraphs, before entering a Unit the Association shall: (i) give notice to the Owner that an entry is required at least two (2) weeks in advance with such notice stating: (A) that the Association or its authorized Persons will enter the Unit, (B) the date and time of the entry, (C) the purpose of entering the Unit, (D) a statement that the Owner or Occupant can be present during the time the Association is in the Unit, (E) the full names of any Person who will be entering into the Unit, and the phone numbers and addresses of the Persons entering the Unit or of the company for whom the Persons entering the Unit are employed for the purpose of entering the Unit, and (F) any other information the Association deems appropriate to include; and (ii) post the written notice described above on the front door to the Unit at least seven (7) days prior to entry into the Unit.
- (c) Notice to a Lender. Notice to a Lender shall be delivered by certified or registered mail to the most recent address furnished by such Lender in writing to the

Association for the purpose of notice or, if no such address shall have been furnished, to any office of the Lender. Any address for a Lender that is found on a recorded document evidencing a security interest in a Unit shall be deemed an office of the Lender. Any notice so deposited in the mail shall be deemed effective when received, or five (5) days after such deposit.

- (d) Notice to Association from an Owner. An Owner's notice to the Association shall be effective upon the satisfaction of any of the following delivery methods:
- (1) by a written notice delivered personally to the Manager, which shall be effective upon delivery;
 - (2) by a written notice placed in the first-class United States mail, postage prepaid, to the current registered business address of the Association. Any notice so deposited in the mail shall be deemed effective when received, or five (5) days after such deposit, whichever occurs first;
 - (3) by Electronic Transmission to the Association: (i) that is sent to an e-mail address provided by the Association in the prior twelve (12) months for the purpose of Association communications, or (ii) that is emailed to an e-mail address from which the Manager or the President of the Association has communicated related to Association matters, and so long as no indication is received that the e-mail may not have been delivered or received. Any notice sent by e-mail shall be deemed effective when received, or five (5) days after it is sent, whichever occurs first; or
 - (4) by facsimile (whether to a machine or to an electronic receiving unit) to the Association that is sent to a facsimile number provided by the Association for the purpose of Association communications and so long as no indication is received that the facsimile may not have been delivered or received. Any notice sent by facsimile shall be deemed effective when received, or five (5) days after it is sent, whichever occurs first.

ARTICLE 18: ATTORNEY FEES AND COSTS

18.1 Legal Costs Associated with Disputes with Owners.

- (a) Right to Recovery in Lawsuit. In any lawsuit related to the Association or the enforcement of Governing Documents that occurs between an Owner and the Association or between any Owner and any other Owner, the prevailing party shall be entitled to recover all reasonable attorney fees and costs.
- (b) Owners Liable for Fees Incurred in Dispute. If an Owner has failed to comply with the Governing Documents and the Association utilizes legal counsel to enforce any of those provisions after notice to the Owner that it intends to enforce, or after the Owner communicates or demonstrates an intent not to comply with a provision of the Governing Documents, the Association may assess all reasonable attorney fees and costs associated with such enforcement to the Owner, regardless of whether a lawsuit is initiated or not.

- (c) Costs. The term “costs” as used in this Article shall include all costs including copying costs, deposition costs, expert witness fees, investigative costs, service costs, and filing fees paid to courts. “Costs” is specifically defined in this Declaration to be broader and to include costs that are not included in costs, as the term is used in the Utah Rules of Civil Procedure.
- (d) Exception to Owner’s Liability for Fees and Costs. If, related to: (1) any dispute with an Owner; (2) any challenge by an Owner to a position of the Association on the interpretation of a provision of the Governing Documents; or (3) a request of an Owner for direction on the application of a provision of the Governing Documents, the Association incurs legal fees or costs related to the interpretation and application of such provision that: (i) the Association could not establish an initial position on without having incurred the fees and costs; or (ii) results in a material modification to a prior position taken by the Association: then those fees or costs incurred to establish the initial or revised position shall not be assessed to any Owner and instead shall be paid by the Association. This exception shall not apply if a lawsuit is currently pending in which the Owner is a party and the issues arise as part of the lawsuit.

**ARTICLE 19:
RESERVES**

19.1 **Requirement for Reserves**. The Association shall obtain a reserve analysis and maintain a reserve fund for the maintenance, repair, and replacement of the Common Area and Limited Common Area, in the amount determined by the Board of Trustees annually, pursuant to the following provisions:

- (a) Collection. Reserve funds may be collected as part of Annual or Special Assessments, as determined by the Board of Trustees.
- (b) Amount. In formulating the Association’s yearly budget, the Association shall include a reserve fund line item in an amount the Board of Trustees determines, based on the reserve analysis, to be prudent. A reserve fund line item means the line item in the Association’s annual budget that identifies the amount to be placed into the reserve fund.
- (c) Owner Veto. Within forty-five (45) days after the day on which the Association adopts the annual budget, the Owners may veto the reserve fund line item by a fifty-one percent (51%) vote of the Undivided Interests in the Association at a special meeting called by the Owners for the purpose of voting whether to veto a reserve fund line item. If the Owners veto a reserve fund line item and a reserve fund line item exists in a previously approved annual budget of the Association that was not vetoed, the Association shall fund the reserve account in accordance with that prior reserve fund line item.
- (d) Surplus Monies Applied to Reserves. The Association may retain surplus Association money as additional reserves rather than refund it to the Owners or credit it to future Assessments.
- (e) Segregation of Reserves. The Association shall segregate money held for reserves from regular operating and other accounts and shall keep all reserve funds in an

account, or accounts, in the name of the Association. The Association may elect to prudently invest money held in the reserves fund in a low-risk investment or high-yield saving account. All investments must be approved by the Board of Trustees. Investments must be made with caution in order to ensure that all Reserve Funds are protected from loss of principal. Certificates of deposit are appropriate for a reasonable percentage of reserve funds, as determined by the Board of Trustees, with no more than a three (3) year maturity. Reserve funds are not to be placed in high-risk, high-reward investments. The remainder of the funds should be placed in liquid savings or money market accounts with a positive annual yield, net of any bank fees. The Board of Trustees may determine by resolution the maximum amount of reserves that may be invested. The Association may not commingle reserve funds with the funds of any other person.

- (f) Use of Reserves. Unless at least fifty-one percent (51%) of the Owners vote to approve the use of reserve fund money for that purpose, the Board of Trustees may not use reserve fund money for (1) daily maintenance expenses; or (2) any purpose other than the purpose for which the reserve fund was established
- (g) Reserve Analysis. The Association shall cause a reserve analysis with an onsite evaluation to be conducted no less frequently than every six (6) years. The Association shall review and, if necessary, update a previously conducted Reserve Analysis no less frequently than every three (3) years. The reserve analysis shall include, at a minimum: (1) a list of the components identified in the reserve analysis that will reasonably require reserve funds; (2) a statement of the probable remaining useful life, as of the date of the reserve analysis, of each component identified in the reserve analysis; (3) an estimate of the cost to repair, replace, or restore each component identified in the reserve analysis; (4) an estimate of the total annual contribution to a reserve fund necessary to meet the cost to repair, replace, or restore each component identified in the reserve analysis during the component's useful life and at the end of the component's useful life; and (5) a reserve funding plan that recommends how the Association may fund the annual contribution set forth in the reserve analysis. The reserve analysis and updates shall project a minimum of thirty (30) years into the future.
- (h) Qualifications for Person Preparing Reserve Analysis. The reserve analysis report shall be prepared by a Person who satisfies the law, who may be a Person or Persons with either the RS (Reserve Specialist) designation available through the Community Association Institute (CAI), the PRA (Professional Reserve Analyst) designation offered through the Association of Professional Reserve Analysts (APRA), or other designations by similar associations establishing that the Person has some formal training related to preparing a reserve analysis. The foregoing notwithstanding, if provided for in the Act, the Board of Trustees may conduct a level 1 or level 2 reserve analysis for the Association.
- (i) Disclosure and Approval at Annual Meeting. If required by law, annually, at a special meeting or at the annual meeting of Owners, the Association shall present the most recent reserve analysis and any updates to the reserve analysis and provide an opportunity for Owners to discuss reserves and to vote on how to fund

the reserves and in what amount. The Association shall prepare and keep minutes of each meeting held under this Article 19.1(h) and indicate in the minutes any decision relating to funding a reserve fund.

- (j) Summary and Copies of Reserve Analysis. The Association shall annually provide Owners a summary of the most recent reserve analysis or update. The Association shall provide a copy of the complete reserve analysis or update to an Owner who requests a copy.

**ARTICLE 20:
LEASING AND NON-OWNER OCCUPANCY**

20.1 **Declaration and Rules Governing Non-Owner Occupancy.** Notwithstanding anything to the contrary in this Declaration or in the Bylaws, any leasing and non-Owner occupancy of a Unit shall be governed by this Article 20 and by Rules and procedures adopted as allowed in this Article 20.

20.2 **Definitions.** For the purpose of this Article 20:

- (a) **“Non-Owner Occupied”** means:
 - (1) For a Unit owned in whole or in part by an individual or individuals, the Unit is occupied by someone when no individual Owner occupies the Unit as the individual Owner’s primary residence; or
 - (2) For a Unit owned entirely by one or more entities or trusts, the Unit is occupied by anyone other than the person for whom the entity or trust was created or anyone other than the owners of the entity.
- (b) **“Family Member”** means the parent, sibling, or child of an Owner; or, if the Unit is owned by a trust or entity created for estate planning purposes, if the estate planning trust or entity was created for the estate of the person currently occupying the Unit, or the parent, child, or sibling of the current occupant of the Unit.
- (c) **“Non-Owner Occupant”** means the Person(s) occupying the Non-Owner Occupied Unit.
- (d) **“Short-Term Rental”** means a Dwelling or any portion of a Dwelling that the Owner or the Non-Owner Occupant lessee of the Dwelling offers for occupancy for fewer than thirty (30) consecutive days or a Dwelling or any portion of a Dwelling that is actually used for accommodations or lodging of guests for payment or other compensation for a period of less than thirty (30) consecutive days.

20.3 **Limitation on Non-Owner Occupancy.** Subject to the provisions in this Article 20, the number of Units permitted to be Non-Owner Occupied within the Association at any one given time is limited to 22 Units. So long as there are less than 22 total Non-Owner Occupied Units within the Condominium Project, any Unit may be leased or Non-Owner Occupied as long as such Non-Owner occupancy complies with the provisions of this Article 20 and other applicable provisions of the Declaration and Act. The 22 Unit maximum shall be calculated by including any Units that are permitted to be Non-Owner

Occupied pursuant to the exemptions in Article 20.4 and the grandfathering provision in Article 20.5.

20.4 **Units Exempt from the Limitation on Non-Owner Occupied Units.** The following Unit Owners and Units are exempt from the limitation on Non-Owner Occupied Units in this Article 20:

- (a) A Unit Owner in the military for the period of the Unit Owner's deployment;
- (b) A Unit occupied by the Unit Owner's Family Member;
- (c) A Unit Owner whose employer has relocated the Unit Owner for a period of two (2) years or less;
- (d) A Unit owned by an entity that is occupied by an individual who: (1) has voting rights under the entity's organizing documents; and (2) has a twenty-five percent (25%) or greater share of ownership, control, and right to profits and losses of the entity; or
- (e) A Unit owned by a trust or other entity created for estate planning purposes if the trust or other estate planning entity was created for the estate of: (1) a current resident of the Unit, or (2) the parent, child, or sibling of the current resident of the Unit.

20.5 **Grandfathered Units.** Units that were Non-Owner Occupied before June 13, 2019, the date the Enabling Declaration was amended regarding Non-Owner Occupied Units and recorded with the Salt Lake County Recorder, may continue to be Non-Owner Occupied until: an Owner of the Unit occupies the Unit; an officer, owner, member, trustee, beneficiary, director, or Person holding a similar position of ownership or control of an entity or trust that holds an ownership interest in the Unit, occupies the Unit; or the Unit is transferred. Upon either of these occurrences, the Unit's qualification for this exception irrevocably terminates.

- (a) For purposes of this Article, a Unit is transferred when one or more of the following occurs: (i) the conveyance, sale, or other transfer of a Unit by deed, as evidenced by the records at the Salt Lake County Recorder; (ii) the granting of a life estate in the Unit; or if the Unit is owned by any type of a business entity then the sale or transfer of more than seventy-five percent (75%) of the business entity's share, stock, membership interest or partnership interest occurs during a twelve month period.

20.6 **Permitted Rules.** The Board of Trustees may adopt Rules requiring:

- (a) Reporting and procedural requirements related to Non-Owner Occupied Units and the Occupants of those Units including requiring informational forms to be filled out by Owners and/or residents identifying Non-Owner Occupants, the age of Non-Owner Occupants, vehicles, phone numbers, etc.;
- (b) Reasonable fees related to the administration of leased and Non-Owner Occupied Units, to the extent otherwise allowed by law;
- (c) Limitations on notices and advertisements identifying the Unit as available to be leased; and

- (d) Other reasonable administrative provisions consistent with and as it deems appropriate to enforce the requirements of this Declaration.
- 20.7 **Required Rules.** The Board of Trustees shall adopt Rules, resolutions, or procedures to:
- (a) determine and track the number of Non-Owner Occupied Units in the Condominium Project, including those grandfathered under Article 20.5 and exempt under Article 20.4, and
 - (b) ensure consistent administration and enforcement of the restrictions on Non-Owner Occupied Units in this Declaration.
- 20.8 **Requirements for Leasing and Non-Owner Occupancy.** The Owners of all Units must comply with the following provisions:
- (a) If required in the Rules or requested by the Board of Trustees, a copy of any lease or other agreement for Non-Owner Occupancy shall be delivered to the Association within the time period provided for in the Rules or by the Board of Trustees.
 - (b) No Owner shall be allowed to lease or rent the Owner's Unit unless and until the Unit has been occupied by the Owner for a period of at least one year; however, if any of the exemptions identified in Article 20.4 apply to the Owner or Unit then the time period of such non-Owner occupancy under the Article 20.4 exemptions shall count towards satisfying the Unit Owner's one-year occupancy's requirement.
 - (c) Any lease or agreement for Non-Owner Occupancy must be in writing, must be for an initial term of at least twelve (12) months, and shall provide as a term of the agreement that the resident shall comply with the Association's Governing Documents, and that any failure to comply shall be a default under the lease or agreement. If a lease or agreement for non-Owner occupancy (whether in writing or not) does not include these provisions, they shall nonetheless be deemed to be part of the lease or agreement and binding on the Owner and the Non-Owner Occupant.
 - (d) Short-Term Rentals are prohibited. Daily or weekly rentals are prohibited and no Unit may be occupied by a Non-Owner or Owner for transient, short-term (less than 12 months) rentals or a hotel, resort, vacation, or seasonal use of any kind whether for pay or not. This prohibition includes Short-Term Rentals through Airbnb, VRBO, and in similar websites and services. Except as a non-paying guest of an Owner, daily and weekly occupancy by a Non-Owner Occupant is prohibited.
 - (e) No Owner may lease individual rooms to separate Persons, or lease less than the Owner's entire Unit.
 - (f) Any Owner who shall lease the Owner's Unit shall be responsible for assuring compliance by the Non-Owner Occupant(s) with the Governing Documents. Failure by an Owner to take legal action, including the institution of a forcible entry and unlawful detainer proceeding against the Owner's Non-Owner Occupant who is in violation of the Governing Documents within ten (10) days after receipt of written demand to do so from the Board of Trustees, shall entitle the Association to take any and all such action including the institution of

proceedings in forcible entry and unlawful detainer on behalf of such Owner against his Non-Owner Occupant. Neither the Association, the Board of Trustees, nor any Manager shall be liable to the Owner or Non-Owner Occupant for any eviction under this Article that is made in good faith. Any expenses incurred by the Association related to an eviction, including attorney fees, service fees, storage fees, constable or sheriff fees, and costs of suit, shall be charged as an Assessment to such Owner.

- 20.9 **Exceptions for Exempt Units.** If a Non-Owner Occupied Unit is exempt under Article 20.4(b), (d), or (e) then no written lease or rental agreement between the Owner and the Occupant is required.
- 20.10 **Joint and Several Liability of Owner and Non-Owner Occupants.** The Owner of a Unit shall be responsible for the Non-Owner Occupant's or any guest's compliance with the Governing Documents. The Owner and the Non-Owner Occupant, or similarly situated individual, shall be joint and severally liable for any violations of the Governing Documents. In addition to any other remedy for noncompliance with the Governing Documents, the Association shall have the right to initiate a forcible entry and unlawful detainer action, or similar such action, with the purpose of removing the Non-Owner Occupant. The Association, the Board of Trustees, the Manager, and any agent of the Association shall not have any liability for any action taken pursuant to this Article 20.10 and the Owner shall indemnify against all losses and liabilities and pay the defense costs of the Association (with the Association's choice of counsel), the Board of Trustees, and the Manager arising from any claim related to any action taken in good faith by any of them pursuant to this Article 20.10.

ARTICLE 21: RIGHTS OF LENDERS

- 21.1 **Notice to Lender.** Each Lender may request to receive the notices provided in this Declaration by written request to the Board of Trustees which request shall set forth the name and address and Unit number for the Unit secured by its mortgage. Only those Lenders requesting notice pursuant to this Article 21.1 shall be entitled to receive the notices required in this Declaration. A Lender requesting notice pursuant to this Article 21.1 is referred to herein as an "Eligible Lender".
- 21.2 **Books and Records.** A Lender shall have the right to examine the books and records of the Association. A Lender may also require annual financial statement of the Association be made available to it within one hundred twenty (120) days after the end of the Association's fiscal year.
- 21.3 **Damage or Condemnation.** A Lender shall be entitled to notice of any condemnation of or damage to a material part of the Unit to which its mortgage pertains or to the Condominium Project. No Unit Owner or other party shall be entitled to priority over a Lender as to the distribution to such Unit of any insurance proceeds or condemnation award.
- 21.4 **Notice of Default, Lapse, or Action.** Each Eligible Lender is entitled to written notification from the Board of Trustees of any default by the Owner of the Unit to which its mortgage pertains in the performance of any obligation under the Declaration which is

not cured within sixty (60) days of a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association, and of any proposed action which requires the consent of a specified percentage of Eligible Lenders.

21.5 **Consent of Lenders.** Unless at least fifty-one percent (51%) of Eligible Lenders consent in writing or by operation of law, pursuant to the Act, neither the Board of Trustees nor the Association shall be entitled to do any of the following by either action or inaction:

- (a) Seek to abandon or terminate the Condominium Project, except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of condemnation or eminent domain;
- (b) Make a material amendment to this Declaration which would change the equal, undivided ownership interest appurtenant to a Unit for the purposes of levying assessments or charges, the allocation or distribution of hazard insurance proceeds or condemnation awards, the Rate of Assessment, or the Undivided Interest of the Unit Owners in the Common Area;
- (c) Seek to amend, partition, subdivide, encumber, sell, or transfer the Common Areas, but the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Areas shall not be deemed a transfer within the meaning of this Article 21.5(d); and
- (d) Use hazard insurance proceeds for losses to any Condominium Project property (whether to Units or to the Common Areas) for other than the repair, replacement, or reconstruction of such improvements, except as provided by statute in cases of substantial loss to the Units and/or Common Areas.

21.6 **Relationship with Assessment Liens.**

- (a) In accordance with Utah Code § 57-8-44, the lien provided for in Article 8 for the payment of Assessments shall be subordinate to: (1) a lien or encumbrance recorded before the Enabling Declaration was recorded; (2) a first or second security interest on the Unit by Lender which was recorded prior to the recordation of any notice of lien by, or on behalf of, the Association; or (3) a lien for real estate taxes or other governmental assessments or charges against the Unit.
- (b) If any Unit which is subject to a monetary lien created by this Declaration is also subject to the lien of a Lender, then: (1) the foreclosure of any lien created by this Declaration shall not operate to affect or impair the lien of such Lender with a superior lien, and (2) the foreclosure of the lien of a Lender or the sale under a power of sale included in a mortgage or deed of trust shall not operate to affect or impair the lien hereof, except that any Person who obtains an interest thereafter shall take title free of any lien created by this Declaration for any Assessments which became due after the recordation of the mortgage or deed of trust, or any personal obligation for such charges, but such Person shall remain subject to the lien hereof for all charges that shall accrue subsequent to such foreclosure.
- (c) Without limiting the provisions of Article 21.6(b), any Lender who obtains title to a Unit by reason of any foreclosure, or any Person who obtains title at a private or

judicial foreclosure sale, shall take title to such Unit free of any lien or claim for unpaid Assessments against such Unit which accrued prior to the time such Lender or purchaser takes title to such Unit, except for liens or claims for a share of such Assessments resulting from a pro rata reallocation of such Assessments to all Units within the Condominium Project.

- (d) Nothing in this Article 21.6 shall be construed as releasing any Person from the personal obligation to pay for any Assessments levied pursuant to this Declaration during the period such Person is an Owner.

ARTICLE 22: GENERAL PROVISIONS

- 22.1 **Enforcement.** The Association or any Owner shall have the right to enforce, by proceedings at law or in equity, all Terms and Conditions including the right to prevent the violation of any such Terms and Conditions and the right to recover damages and other sums for such violation.
- 22.2 **Non-liability of Officials.** To the fullest extent permitted by applicable law, neither the Board of Trustees nor any officer of the Association shall be liable to any Owner or the Association for any damage, loss, or prejudice suffered or claimed on account of any decision, approval or disapproval, course of action, act, omission, error or negligence.
- 22.3 **Use of Funds Collected by the Association.** All funds collected by the Association, including Assessments and contributions to the Association paid by the Owners, if any, shall be held by the Association in a fiduciary capacity to be expended in their entirety for nonprofit purposes of the Association in managing, maintaining, caring for and preserving the Common Area and for other permitted purposes as set forth in this Declaration. No part of said funds shall inure to the benefit of any Owner (other than as a result of the Association managing, maintaining, caring for and preserving the Common Area and other than as a result of expenditures made for other permitted purposes as set forth in this Declaration).
- 22.4 **Owner Liability and Indemnification.** Each Owner shall be liable to the remaining Owners and to the Association for any damage to the Common Area that may be sustained by reason of the negligent or intentional act of that Owner or that Owner's guest or Occupant, to the extent such losses and damages are either under the Deductible of the Association or not covered by the Association's insurance. Each Owner, by acceptance of a deed to a Unit, agrees personally to indemnify against all losses and liabilities and to defend each and every other Owner and Occupant against, any claim of any Person for personal injury or property damage occurring within the indemnifying Owner's Unit, including Limited Common Area, if any, except to the extent that: (a) such injury, damage, or claim is covered and defended by the Association's insurance; or (b) the injury or damage occurred by reason of the intentional act of the Association.
- 22.5 **Consent, Power of Attorney, Waiver.** By acceptance of a deed, lease, or other conveyance of an interest in a Unit, each Owner or Occupant consents to the rights reserved to the Association in this Declaration, including but not limited to, the right to prepare, execute, file, process, and record necessary and appropriate documents and other items to establish and grant easements and to make necessary and appropriate

amendments of this Declaration, the Plat and the Bylaws. By such acceptance, each Owner or Occupant agrees to execute all documents and to do all other things as may be necessary or convenient to effect the same; and such acceptance shall be deemed an appointment of the Association, with full right of substitution, as the attorney-in-fact of such Owner or Occupant to execute such documents and to do such things on such Owner's or Occupant's behalf; and such appointment, being coupled with an interest, shall be irrevocable for the specific period of the Association's reserved rights as set forth in this Declaration and shall not be affected by the disability of any such Owner or Occupant.

- 22.6 **Security.** The Association shall in no way be considered an insurer, guarantor, or provider of security from criminal conduct within or relating to the Condominium Project, including any Common Area that the Association may have an obligation to maintain. The Association shall not be held liable for any loss or damage by reason of criminal conduct arising for any reason including any failure to provide security or any ineffectiveness of security measures undertaken. Each Owner or Person entering the Condominium Project acknowledges that the Association has no duty to any Owner, guest, or Occupant related to security or criminal conduct and expressly acknowledges that no duty is owed to anyone such as that of a landlord or retail business. By purchasing a Unit in this Condominium Project and/or residing in this Condominium Project, Owners and Occupants agree that the Association and the Board of Trustees are not insurers of the safety or well-being of Owners, guests, or Occupants or of their personal property as it relates to criminal conduct, and that each Owner, guest, or Occupant specifically waives any such claim and assumes all risks for loss or damage to Persons or property resulting from criminal conduct, to the extent any such damages are not covered by insurance.
- 22.7 **Reasonable Accommodations.** Notwithstanding anything to the contrary in this Declaration, the Association, upon receipt of a written opinion from its counsel that such action is required, may make or permit reasonable accommodations or modifications to the Condominium Project that are otherwise prohibited by the Governing Documents, as required under Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act) as amended, to accommodate a Person with a handicap (as defined by Federal law at the time the accommodation is requested) or disability (as defined by state law at the time the accommodation is requested). Reasonable accommodations or modifications may include modifications to a Unit, the Common Area, the Limited Common Area, or the Building, or deviations from provision of the Governing Documents. Any such modification and accommodation made under this Article shall not act as a waiver of the provisions of the Governing Documents regarding anyone else.
- 22.8 **No Representations and Warranties.** EACH OWNER AND OCCUPANT UNDERSTANDS, AGREES, AND ACKNOWLEDGES THROUGH TAKING TITLE OR ENTERING OR RESIDING IN THE CONDOMINIUM PROJECT THAT THE ASSOCIATION AND THE BOARD OF TRUSTEES HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND RELATED TO THE CONDOMINIUM PROJECT AND THAT EACH OWNER OR OCCUPANT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS

FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE CONDOMINIUM PROJECT.

IN WITNESS WHEREOF, and execution of the same, the undersigned officer or director of the Association hereby certifies that the vote required for this Declaration has occurred and the same was approved by Owners holding at least sixty-seven percent (67%) of the Undivided Interest of the Association and by the requisite number of first Mortgagees, and the Declaration is therefore and hereby adopted, including Bylaws for the Association and all other exhibits hereto.

Dated this 30th day of December, 2022.

BROOKSTONE CONDOMINIUM HOMEOWNER'S ASSOCIATION

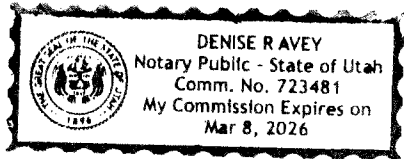
By: *Stephen Spencer*
Signature

Stephen Spencer
Printed

Its: President
Title

STATE OF UTAH)
) ss.
COUNTY OF UTAH)

The foregoing instrument was acknowledged before me this 30th day of December, 2022 by Stephen Spencer, as a Member of the Board of Trustees for Brookstone HOA.



[Signature]
Notary Public

EXHIBIT A - UNDIVIDED PERCENTAGE INTEREST BY UNIT NUMBER

REVISED EXHIBIT "A"
 BROOKSTONE CONDOMINIUM PROJECT
 (After Third Expansion)

<u>Unit No.</u>	<u>Building No.</u>	<u>Size (Sq. Ft. Living Space)</u>	<u>Percentage Interest</u>
1	1	1578	.4212%
2	1	2094	.5590%
3	1	2185	.5833%
4	1	1710	.4564%
5	2	1578	.4212%
6	2	2094	.5590%
7	2	2185	.5833%
8	2	1710	.4564%
9	3	1356	.3619%
10	3	1780	.4751%
11	3	1780	.4751%
12	3	1356	.3619%
13	4	1356	.3619%
14	4	1780	.4751%
15	4	1780	.4751%
16	4	1356	.3619%
17	5	1356	.3619%
18	5	1780	.4751%
19	5	1780	.4751%
20	5	1356	.3619%
21	6	1356	.3619%
22	6	1780	.4751%
23	6	1780	.4751%
24	6	1356	.3619%
25	7	1578	.4212%
26	7	1710	.4564%
27	8	2094	.5590%
28	8	1578	.4212%
55	17	1578	.4212%
56	17	2094	.5590%

REVISED EXHIBIT "A" - (Continued)

<u>Unit No.</u>	<u>Building No.</u>	<u>Size (Sq. ft. Living Space)</u>	<u>Percentage Interest</u>
57	17	2185	.5833%
58	17	1710	.4564%
59	18	1578	.4212%
60	18	2094	.5590%
61	18	2185	.5833%
62	18	1710	.4564%
63	19	1578	.4212%
64	19	2094	.5590%
65	19	2185	.5833%
66	19	1710	.4564%
67	20	1578	.4212%
68	20	2094	.5590%
69	20	2185	.5833%
70	20	1710	.4564%
71	21	1578	.4212%
72	21	1710	.4564%
73	22	1578	.4212%
74	22	2094	.5590%
101	32	1578	.4212%
102	32	2094	.5590%
103	32	2185	.5833%
104	32	1710	.4564%
105	33	1578	.4212%
106	33	2094	.5590%
107	33	2185	.5833%
108	33	1710	.4564%
29	9	1710	.4564%
30	9	1578	.4212%
31	10	1578	.4212%
32	10	2094	.5590%
33	11	1356	.3619%
34	11	1780	.4751%

REVISED EXHIBIT "A" - (Continues)

<u>Unit No.</u>	<u>Building No.</u>	<u>Size (Sq. Ft. Living Space)</u>	<u>Percentage Interest</u>
35	11	1780	.4751%
36	11	1356	.3619%
37	12	1710	.4564%
38	12	2185	.5833%
39	12	2094	.5590%
40	12	1578	.4212%
41	13	1356	.3619%
42	13	1780	.4751%
43	13	1780	.4751%
44	13	1356	.3619%
45	14	1356	.3619%
46	14	1356	.3619%
47	14	1356	.3619%
48	14	1356	.3619%
49	14	1356	.3619%
50	15	1780	.4751%
51	15	1780	.4751%
52	15	1356	.3619%
53	16	1710	.4564%
54	16	1578	.4212%
75	23	1578	.4212%
76	23	1710	.4564%
77	24	1710	.4564%
78	24	1578	.4212%
79	25	2094	.5590%
80	25	1578	.4212%
81	26	1710	.4564%
82	26	1578	.4212%
83	27	1710	.4564%
84	27	2185	.5833%
85	27	2094	.5590%
86	27	1578	.4212%
87	28	1710	.4564%

REVISED EXHIBIT "A" - (Continued)

<u>Unit No.</u>	<u>Building No.</u>	<u>Size (Sq. ft. Living Space)</u>	<u>Percentage Interest</u>
88	28	1578	.4212%
89	28	1578	.4212%
90	28	1710	.4564%
91	29	1578	.4212%
92	29	1710	.4564%
93	30	1710	.4564%
94	30	1578	.4212%
95	30	1578	.4212%
96	30	1710	.4564%
97	31	1356	.3619%
98	31	1780	.4751%
99	34	1780	.4751%
100	34	1356	.3619%
109	35	1710	.4564%
110	35	1578	.4212%
111	36	1710	.4564%
112	36	1578	.4212%
113	37	1356	.3619%
114	37	1780	.4751%
115	37	1780	.4751%
116	37	1356	.3619%
117	38	1578	.4212%
118	38	1710	.4564%
119	39	1710	.4564%
120	39	1578	.4212%
121	40	1710	.4564%
122	40	1578	.4212%
123	40	1578	.4212%
124	40	1710	.4564%
125	41	1578	.4212%
126	41	2094	.5590%
127	41	2185	.5833%
128	41	1710	.4564%
129	42	1578	.4212%
130	42	2094	.5590%

REVISED EXHIBIT "A" - (Continued)

<u>Unit No.</u>	<u>Building No.</u>	<u>Size (Sq. ft. Living Space)</u>	<u>Percentage Interest</u>
131	42	2185	.5833%
132	42	1710	.4564%
133	43	1356	.3619%
134	43	1780	.4751%
135	44	1780	.4751%
136	44	1356	.3619%
137	45	1356	.3619%
138	45	1780	.4751%
139	46	1780	.4751%
140	46	1356	.3620%
141	47	1578	.4212%
142	47	2094	.5590%
143	47	2094	.5590%
144	47	1578	.4212%
145	48	1356	.3620%
146	48	1780	.4751%
147	48	1780	.4751%
148	48	1356	.3620%
149	49	1710	.4564%
150	49	1578	.4212%
151	49	1578	.4212%
152	49	1710	.4564%
153	50	1710	.4564%
154	50	1578	.4212%
155	51	1578	.4212%
156	51	1710	.4564%
157	52	1710	.4564%
158	52	1578	.4212%
159	53	1710	.4564%
160	53	1578	.4212%
161	53	1578	.4212%
162	53	1710	.4564%
163	54	1710	.4564%

REVISED EXHIBIT "A" - (Continued)

<u>Unit No.</u>	<u>Building No.</u>	<u>Size (Sq. ft. Living Space)</u>	<u>Percentage Interest</u>
164	54	1578	.4212%
165	54	1578	.4212%
166	54	1710	.4564%
167	55	1710	.4564%
168	55	2094	.5590%
169	55	2094	.5590%
170	55	1710	.4564%
171	56	1710	.4564%
172	56	2094	.5590%
173	56	2094	.5590%
174	56	1710	.4564%
175	57	1710	.4564%
176	57	2094	.5590%
177	57	2094	.5590%
178	57	1710	.4564%
179	58	1710	.4564%
180	58	1578	.4212%
181	58	1578	.4212%
182	58	1710	.4564%
183	59	1578	.4212%
184	59	1578	.4212%
185	59	1578	.4212%
186	59	1578	.4212%
187	60	1578	.4212%
188	60	1780	.4751%
189	60	1780	.4751%
190	60	1578	.4212%
191	61	1578	.4212%
192	61	1780	.4751%
193	61	1780	.4751%
194	61	1578	.4212%
195	62	1356	.3620%
196	62	1356	.3620%
197	62	1356	.3620%

REVISED EXHIBIT "A" - (Continued)

<u>Unit No.</u>	<u>Building No.</u>	<u>Size (Sq. ft. Living Space)</u>	<u>Percentage Interest</u>
198	62	1356	.3620%
199	63	1780	.4751%
200	63	1356	.3620%
201	64	1356	.3620%
202	64	1780	.4751%
203	65	1780	.4751%
204	65	1356	.3620%
205	66	1710	.4564%
206	66	2094	.5590%
207	66	2094	.5590%
208	66	1710	.4564%
209	67	1710	.4564%
210	67	1578	.4212%
211	67	1578	.4212%
212	67	1710	.4564%
213	68	1710	.4564%
214	68	1578	.4212%
215	68	1578	.4212%
216	68	1710	.4564%
217	69	1710	.4564%
218	69	2094	.5590%
219	69	2094	.5590%
220	69	1710	.4564%
			100%

EXHIBIT B – PROPERTY DESCRIPTION BY CONSTRUCTION PHASE

EXHIBIT B
Legal Description

The Land described in the foregoing document is located in Salt Lake County, Utah and is described more particularly as:

PHASE ONE

Beginning at a point on the centerline of 6400 South Street, said point being S 0°07'45" W 1404.54 feet; thence N 89°57'30" W 2639.85 feet to a monument; thence 89°46'54" W along the centerline of said 6400 South Street 378.466 feet from the Northeast Corner of Section 21, Township 2 South, Range 1 East, Salt Lake Base and Meridian, and running thence South 356.88 feet; thence East 59.25 feet; thence South 338.00 feet; thence West 112.00 feet; thence South 160.45 feet; thence S 60°00' W 176.17 feet to a point on a curve to the right, the radius point of which is N 60°00' E 232.50 feet; thence Northwesterly along the arc of said curve 29.42 feet to a point of tangency; thence N 22°45' W 161.05 feet to a point of a 1150.0 foot radius curve to the left; thence Northwesterly along the arc of said curve 225.80 feet to a point of a reverse curve to the right, the radius point of which is N 56°00' E 210.0 feet; thence Northerly along the arc of said curve 142.94 feet; thence S 87°13'06" W 196.87 feet; thence N 2°46'54" W 447.00 feet to the centerline of said 6400 South Street; thence S 89°46'54" E along said centerline 641.234 feet to the point of beginning.

RESERVED FROM THE FOREGOING SUBMISSION are such easements and rights of ingress and egress over, across, through, and under the above-described tracts and any improvements now or hereafter constructed thereon as may be necessary to develop the entire Project. If pursuant to this reservation, the above-described real property or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist. With the exception of such perpetual easements, the reservation hereby effected shall terminate upon the completion and sale by Declarant of all Units in the Project. The foregoing submission is subject to a 12 ft. drainage and irrigation easement to Salt Lake County Flood Control and to Little Cottonwood Ditch Company described as follows:

Beginning at a point on the South line of 6400 South Street said point being South 1431.74 feet and West 3661.10 feet from the Northeast corner of Section 21, Township 2 South, Range 1 East, Salt Lake Base and Meridian and running thence South 2°46'54" East 413.95 feet; thence North 87°13'06" East 12.00 feet; thence North 2°46'54" West 413.32 feet to the South line of said 6400 South Street; thence North 89°46'54" West along said South line 12.02 feet to the point of beginning. And subject, also, to easements of record and visible and subject, further, to restrictions, conditions and covenants of record.

PHASE TWO

Beginning at the center of Section 21, Township 2 South, Range 1 East, Salt Lake Base and Meridian and running thence N 89°37'20" W along the South line of the Northwest quarter of said second 1096.07 feet to the East line of Rothmoor Estates No. 1 Subdivision; thence along the East line of said Subdivision as follows: N 26°13'06" E 287.73 feet; thence N 70°43'06" E 188.10 feet; thence N 26°16'54" W 272.24 feet; thence N 36°31'54" W 132.00 feet; thence N 2°46'54" W 114.01 feet; thence leaving said East line N 87°13'06" E 196.87 feet to a point on a curve to the left; the radius point of which is S 85°00' E 210.0 feet; thence Southeasterly along the arc of said curve 142.94 feet, to a point of a reverse curve to the right, the radius point of which is S 56°00' W 1150.0 feet; thence Southeasterly along the arc of said curve 225.80 feet to a point of tangency; thence S 22°45' E 161.05 feet to a point of a 232.50 foot radius curve to the left; thence Southeasterly along the arc of said curve 29.42 feet; thence N 60°00' E 176.17 feet; thence North 160.45 feet; thence East 112.00 feet; thence North 338.0 feet; thence East 68.765 feet to a point of a 90.0 foot radius curve to the right; thence Southeasterly along the arc of said curve 145.56 feet to a point of tangency; thence S 2°40' W 137.00 feet to a point of a 1000.00 foot radius curve to the left; thence Southerly along the arc of said curve 168.715 feet to a point of tangency; thence S 7°00' E 170.00 feet to a point of 120.0 foot radius curve to the right; thence Southwesterly along the arc of said curve 128.42 feet; thence S 35°41' E 38.465 feet; thence S 89°54'30" E 325.20 feet; thence S 0°05'30" W 56.135 feet; thence S 20°14'17" W 85.37 feet; thence S 0°16'04" W 31.00 feet; thence N 89°43'56" W 130.90 feet to the point of beginning. Contains 12.197 acres.

Subject to easements of record, and visible, and subject, also, to restrictions and covenants of record.

RESERVING UNTO THE DECLARANT a perpetual 24 foot right-of-way easement for ingress and egress the centerline of which is described as follows:

Beginning at a point on the South right of way line of 6400 South Street, said point being North 89°46'54" West along the center line of said 6400 South Street 537.59 feet and South 0°13'06" West 33.00 feet from a Salt Lake County Monument at point where the center line of said 6400 South Street intersects the West line of the Northeast quarter of Section 21, Township 2 South, Range 1 East, Salt Base and Meridian; said point of beginning also being North 1203.13 feet and West 535.74 feet from the center of said Section 21 and running thence South 0°13'06" West 324.485 feet; thence East 288.50 feet to a point of a 90.0 foot radius curve to the right; thence Southeasterly along the arc of said curve 145.56 feet to a point of tangency; thence South 2°40' West 137.00 feet to a point of a 1000.0 foot radius curve to the left; thence Southerly along the arc of said curve 168.715 feet to a point of tangency; thence South 7°00' East 170.00 feet to a point of 120.00 foot radius curve to the right; thence Southwesterly along the arc of said curve 128.42 feet; thence South 35°41' East 38.465 feet; thence South 89°54'30" East 170.58 feet; thence South 69°54'30" East 21.93 feet; thence South 89°54'30" East 52.82 feet; thence South 44°54'30" East 102.47 feet to a point on the Northwesterly line of a RV storage area said point

being North 86.68 feet and East 151.80 feet from the center of said Section 21.

PHASE THREE

Beginning at a point which is South 89°43'56" East along the quarter section line 160.61 feet and North 129.88 feet from the center of Section 21, Township 2 South, Range 1 East, Salt Lake Base and Meridian; and running thence North 0°05'30" East 37.495 feet; thence North 89°54'30" West 325.20 feet; thence North 35°41' West 38.465 feet to a point on a 120.00 foot radius curve to the left the center of which bears North 35°41' West from said point; thence Northerly along the arc of said curve 128.42 feet to the point of tangency; thence North 7°00' West 170.00 feet to a point of a 1000.00 foot radius curve to the right; thence Northerly along the arc of said curve 168.715 feet to the point of tangency; thence North 2°40' East 24.90 feet; thence South 89°54'30" East 168.00 feet; thence South 0°05'30" West 7.76 feet; thence South 89°54'30" East 138.19 feet to an old fence line; thence South 0°30' East long said fence line 123.73 feet; thence South 89°57'30" East 157.87 feet to an old fence line; thence South 0°35' East along said fence line 411.52 feet thence North 89°54'30" West 144.92 feet to the point of beginning. Contains 4.949 acres.

PHASE FOUR

Beginning at a point on an old fence line which point is South 89°43'56" East along the quarter section line 142.39 feet and North 664.90 feet from the center of Section 21, Township 2 South, Range 1 East, Salt Lake Base and Meridian, and running thence North 89°54'30" West 138.19 feet; thence North 0°05'30" East 776 feet; thence North 89°54'30" West 168.00 feet; thence North 2°40' East 112.10 feet to a point of a 90.0 foot radius curve to the left; thence northwesterly along the arc of said curve 145.56 feet to a point of tangency; thence West 128.015 feet; thence North 356.88 feet to the centerline of 6400 South Street; thence South 89°46'54" East along said centerline 371.27 feet to a point on the extension of an old fence line; thence South 0°15' East along said extension and fence line 281.07 feet; thence South 89°57'30" East 143.87 feet to an old fence line; thence South 0°30' East along said fence line 288.72 feet to the point of beginning.

EXHIBIT C - BYLAWS

EXHIBIT C

to

Second Amended and Restated Covenants, Conditions and Restrictions

BYLAWS

BROOKSTONE CONDOMINIUM HOMEOWNER'S ASSOCIATION, INC

A Utah Nonprofit Corporation

Approved by the Board of Trustees

Effective as of Date of Recording with the Salt Lake County Recorder

ARTICLE 1

CORPORATE OFFICES

1.1 Business Office. The principal office of the Brookstone Condominium Homeowner's Association, Inc. (depending on the context, the "Corporation" or the "Association") is presently located at 1630 East 6480 South, Salt Lake City, Utah but may be situated at such other place within the State of Utah as designated from time to time by the Board of Trustees.

1.2 Registered Office. The registered office of the Corporation is presently the same as its principal office and may also be situated at such other place within the State of Utah as designated from time to time by the Board of Trustees.

1.3 Contact Information. Current Contact information for the Corporation and its Board of Trustees is available online at the Homeowner Associations Registry maintained on the Utah Department of Commerce Website.

ARTICLE 2

MEMBERS

2.1 Unit Owner Bound: All unit owners are members of the Corporation and as such they and all mortgagees, lessees and occupants of Units and their employees, and any other persons who may use the facilities owned by the Corporation in any manner are subject to the terms of and shall abide by the Declaration, Articles of Incorporation, these Bylaws, and all rules and regulations made pursuant thereto and any amendment thereof ("the Governing Documents"). The acceptance of a deed of conveyance or the entering of a lease or the act of occupancy of a Unit shall constitute an agreement that the provisions of the Governing Documents, as they may be amended from time to time, are accepted, ratified, and will be complied with.

2.2 Annual Meeting. An annual meeting of Owners shall be held each year. The annual meeting will be held on such date and at such time and place as may be designated by the Board of Trustees. At the meeting, trustees shall be elected, and any other proper business may be transacted. If the election of trustees shall not be held on the day designated herein for the annual meeting of the Owners, or at any adjournment thereof, the Board of Trustees shall cause the election to be held at a special meeting of the Owners as soon thereafter as may be convenient.

At or prior to the annual meeting, the Board of Trustees shall furnish to the Owners: (i) the annual operating budget for the coming fiscal year that shall itemize the estimated Common Area Maintenance and Service Assessments for the coming fiscal year with the Owners' estimated proportionate share thereof, and (ii) a statement of the Common Area Maintenance and Service Assessments itemizing receipts and disbursements for the previous and current fiscal year. Within ten (10) days after the annual meeting, the budget statement shall be posted to the Association's website and delivered to the Owners who were not present at the annual meeting but who requested in writing a copy of the budget statement prior to the annual meeting.

2.3 Special Meeting. Special meetings of the Owners may be called at any time by the President or by the Board of Trustees. Special meetings of the Owners may also be called by written notice signed by not less than one-third (1/3) of all Owners stating the issues proposed to be considered at the proposed special meeting and/or the purpose for which said special meeting is to be held, dated and delivered to the Corporation's secretary and all Owners not less than fifteen (15) days prior to the date fixed for said special meeting.

2.4 Place of Meetings. Meetings of Owners shall be held at such reasonable place as may be designated by the Board of Trustees.

2.5 Notice of Meetings. Except as otherwise provided herein, written or printed notice stating the place, date and hour of the meeting, and in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) nor more than sixty (60) days before the date of the meeting, either personally, by regular U.S. mail, postage prepaid, if the Owner has requested the same in writing which states the mailing address to be used, or electronically at the electronic address on record with the Association; all under the direction of the President, the Secretary or the officer or persons calling the meeting. Notice shall be delivered to each Owner of record entitled to vote at such meeting or to any other Owner entitled by the Utah Nonprofit Corporation and Condominium Association Act or Governing Documents to receive notice of the meeting. Notice shall be deemed to be effective at the earlier of: (1) when deposited in the U.S. mail as shown by the postmarked affixed, plus three (3) days; (2) when received; or, (3) the date of the electronic delivery affixed to the transmission.

2.6 Adjournment. If any Owners' meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, and place, if the new date, time, and place is announced at the meeting before adjournment and if the meeting is to take place within 30 days.

2.7 Waiver of Notice /Objection. An Owner may waive notice of the meeting (or any notice required by the Act, or Governing Documents) by a writing signed by the Owner entitled to the notice, which is delivered to the Corporation (either before or after the date and time stated in the notice) for inclusion in the minutes or filing with the Corporation records. An Owner's attendance at a meeting:

(a) waives objection to lack of notice or defective notice of the meeting, unless the Owner at the beginning of the meeting objects to holding the meeting or the transaction of any business at the meeting; and

(b) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the Owner objects to considering the matter when it is presented.

2.8 Special Requirements for Notice of Meeting. If a purpose of any Owner meeting is to consider either: (1) a proposed amendment to the Declaration; (2) a plan of merger or share exchange; (3) the sale, lease, exchange or other disposition of all, or substantially all of the Corporation's property; (4) the dissolution of the Corporation; or (5) the removal of a trustee, the notice must so state and be accompanied by respectively a copy or summary of the: (1) the proposed amendments to the Declaration; (2) plan of merger or share exchange; and (3) a description of the transaction for disposition of all or substantially all of the Corporation's property. If the proposed corporate action creates dissenters' rights, the notice must state that Owners are, or may be entitled to assert dissenters' rights, and must be accompanied by the related, relevant, and appropriate part(s) of the Utah Nonprofit Corporation and Condominium Association Act.

2.9 Fixing of Record Date. To Owners entitled to notice of or to vote at any meeting of Owners, or Owners entitled to take action without a meeting, or in order to make a determination of Owners for any other proper purpose, the Board of Trustees may fix in advance a date as the record date. Such record date shall not be more than 70 days prior to the date on which the particular action, requiring such determination of Owners, is to be taken. If no record date is so fixed by the board, the record date for determination of such Owners shall be at the close of business on:

(a) with respect to an annual Owners' meeting or any special Owners' meeting called by the board or any person specifically authorized by the board or these Bylaws to call a meeting, the day before the first notice is delivered to Owners;

(b) with respect to a special Owners' meeting demanded by the Owners, the date the first Owner signs the demand; and

(c) with respect to actions taken in writing without a meeting (pursuant to Article 2, Section 2.13), the date the first Owner delivers to the Corporation a writing upon which the action is to be taken.

When a determination of Owners entitled to vote at any meeting of Owners has been made as provided in this section, such determination shall apply to any adjournment thereof unless the Board of Trustees fixes a new record date which it must do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting.

2.10 Voting List. The officers of the company shall prepare a list of the names of all the Owners who are entitled to be given notice of the meeting. The list must show the address of each Owner. The Owners' list must be available for inspection by any Owner, beginning on the earlier of

ten (10) days before the meeting for which the list was prepared or two business days after notice of the meeting is given and continuing throughout the meeting and any meeting adjournments, at the Corporation's principal office. An Owner or Owner's agent or attorney is entitled on written demand to the Corporation and, subject to requirement of any other section of these Bylaws or by any applicable sections of the Utah Nonprofit Corporation and Condominium Association Act to inspect and copy the list, during regular business hours and during the period it is available for inspection. The Corporation shall make the Owners' list available at the meeting, and any Owner, or any Owners' agent or attorney is entitled to inspect the list at any time during the meeting or any adjournment, for any purposes germane to the meeting. If the reason an Owner is not on the Voting List because of non-payment of any assessment(s) by the Owner, said Owner will be allowed to vote if the Owner becomes current in the Owner's outstanding assessment obligations at any time prior to the meeting.

2.11 Owner Quorum. The presence in person or by proxy at any meeting of at least fifty-one percent (51%) of the Owners in response to notice of all Owners of record properly given, as provided above, shall constitute a quorum. If at least fifty-one percent (51%) of all Owners are not present in person or by proxy, the meeting shall be adjourned for twenty-four (24) hours, at which time it shall reconvene, and any number of Owners present at such subsequent meeting will constitute a quorum. Unless otherwise expressly provided in the Articles of Incorporation or the Bylaws, any action may be taken at any meeting of the Owners upon a majority vote of the Owners who are present and qualified to vote in person or by proxy and measured by the voting Owner's undivided percentage ownership interest in the Association.

2.12 Proxies. At all meetings of Owners, an Owner may vote in person, or vote by proxy which is executed in writing by the Owner, or which is executed by his duly authorized attorney-in-fact, or by a written statement of the appointment transmitted by telegram, teletype, or other electronic transmission along with written evidence from which it can be determined that the Owner transmitted or authorized the transmission of the appointment. Such proxy shall be filed with the secretary of the Corporation or other person authorized to tabulate votes before or at the time of the meeting. No proxy shall be valid after three (3) months from the date of its execution unless otherwise provided in the proxy.

2.13 Corporation's Acceptance of Votes. If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of an Owner, the Corporation, if acting in good faith, is entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the Owner. The Corporation is entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the Owner. The Corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section are not liable in damages to the Owner for the consequences of the acceptance or rejection. The Corporate action

based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

2.14 Owner Action Without a Meeting. Any action which may be taken at any annual or special meetings of the Owners may be taken without a meeting and without prior notice, if one or more consents in writing, setting forth the actions so taken, shall be signed by the number of Owners that will be necessary to authorize or take the action in a meeting at which all shares entitled to vote thereon were present and voted. Unless the written consents of all of the Owners entitled to vote have been obtained, notice of any Owner approval without a meeting shall be given at least ten days before the consummation of the action authorized by the approval to: (i) those Owners entitled to vote who have not consented in writing, and (ii) those Owners not entitled to vote and to whom the Utah Nonprofit Corporation and Condominium Association Act requires a notice of the above action be given. The notice must contain or be accompanied by the same material that would have been required to be sent in a notice of a meeting at which the proposed action would have been submitted to the Owners for action. Trustees may not be elected by written consent except by unanimous written consent of all Owners entitled to vote for the election of trustees.

2.15 Owner's Right to Inspect Corporate Records. The Corporation shall keep the records of its meetings, actions taken and finances it is required to keep by applicable law. If an Owner gives the Corporation written notice of his or her demand pursuant to applicable law, the Owner or his or her authorized attorney or agent has the right to inspect and copy, during regular business hours, any of the following records, all of which the Corporation is required to keep at its principal office:

- (a) the Articles or restated Articles of Incorporation and all amendments to them currently in effect;
- (b) the Bylaws or restated Bylaws and all amendments to them currently in effect;
- (c) the minutes of all Owners' meetings, and records of all action taken by Owners without a meeting, for the past three years;
- (d) all written communications to Owners generally within the past three years, including the financial statements furnished for the past three years to the Owners;
- (e) a list of the names and business addresses of its current trustees and officers; and,
- (f) the most recent annual report delivered to the Secretary of State.

If an Owner gives the Corporation a written demand made in good faith and for a proper purpose at least five business days before the date on which he or she wishes to inspect and copy the below described records, and if the Owner describes with reasonable particularity his or her purpose and the records the Owner desires to inspect, and the records are directly connected with his or her purposes, the member of the Corporation (or his agent or attorney) is entitled to inspect and copy, during regular business hours at a reasonable location specified by the Corporation, any of the following records of the Corporation: (i) excerpts from minutes of any meeting of the Board of

Trustees, records of any action of a committee of the Board of Trustees on behalf of the Corporation, minutes of any meeting of the Owners, and records of action taken by the Owners or Board of Trustees without a meeting, to the extent not subject to inspection hereunder; (ii) accounting records of the Corporation; and (iii) the record of Owners (compiled no earlier than the date of the Owner's demand).

The right to copy records includes, if reasonable, the right to receive copies made by photographic, xerographic, or other electronic means. The Corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the Owner. The charge may not exceed the estimated cost of production or reproduction of the records. For purposes of this Section 2.14, the term "member" shall include a beneficial owner whose shares are held in a voting trust or by a nominee on his behalf.

2.16 Financial Statements. The budget statement from the most recent annual meeting and any quarterly or annual financial statements of the Corporation made during the year shall be maintained on the Association's website.

ARTICLE 3 BOARD OF TRUSTEES

3.1 General Powers. All corporate powers shall be exercised by or under the authority of, and the business and affairs of the Corporation managed under the direction of, the Board of Trustees, subject to any limitation set forth in the Articles of Incorporation. The Board of Trustees shall have all the powers, duties, and responsibilities as are or may hereafter be provided by the Utah Nonprofit Corporation and Cooperative Association Act (the "Act"), the Articles of Incorporation, the Declaration of Covenants, Conditions and Restrictions of The Brookstone Condominium Homeowners' Association, Inc. and these Bylaws. Among other things and in discharge of these general powers, without limiting the generality of the foregoing, the Board shall have authority, as follows:

(a) To adopt and amend from time to time, by affirmative vote of a majority of the members of the Board, appropriate Rules and Regulations governing the occupancy, use, maintenance, and operation of all units, common areas and facilities comprising the Association for any reasonable purpose, and to make such other rules as permitted by the Articles of Incorporation and these Bylaws including, without limitation, provision and restrictions upon pets, charges and interest to be collected on delinquent assessment accounts and to enforce such rules by action authorized by the Articles of Incorporation, these Bylaws and Utah law. With the adoption of these Rules and Regulations by the Board all owners and future owners of the Association shall be bound by said Rules and Regulations. The House Rules and Regulations promulgated by the Board shall also be binding upon all lessees and future lessees of the owners/members. The Board shall have all authority and rights to initiate legal action or otherwise enforce the House Rules and Regulations.

(b) The Board shall have authority to enter insurance contract(s) or policy(ies) to protect the Corporation and the owners so far as their interest in the common areas of the

Association are concerned against loss by fire or any other insurable hazard and shall have the power to fix the amount of such insurance. The Board shall have the power to secure all necessary insurance covering public liability risks and other risks and to set the amount of said policies. In the event of any loss covered by insurance secured by the Association, the Board shall make claim for such loss and shall take all legal steps to enforce payment for such loss from the insurance company(ies). It shall have the power to determine damage and make necessary adjustments as required by the situation. However, any appraisal of damage or adjustment concerning loss shall not prejudice the rights of individual owners as to any loss suffered by such individual owner.

(c) To engage the services of a manager or managing company, accountants, consultants, attorneys, or other employees or agents and to pay to said persons a reasonable compensation therefor.

(d) To operate, maintain, repair, improve and replace the common areas and facilities, to determine and pay the common expenses, to prepare an annual operating budget, and to assess and collect the proportionate share of common expenses from the Owners.

(e) To enter contracts, deeds, leases, or other written instruments or documents and to authorize the execution and delivery thereof by the appropriate officers.

(f) To open bank accounts on behalf of the Association and to designate the signatures therefor.

(g) To purchase, hold, sell, convey, mortgage, or lease any one or more Units in the name of the Association or its designee.

(h) To borrow funds and enter promissory notes and to approve and sign checks and issue payment vouchers.

(i) To sell portions of the common areas and facilities, and to create exclusive rights for Owners in certain limited common areas.

(j) To do all other acts incident to the discharge of the duties imposed on the Board under the Articles of Incorporation, these Bylaws and the Act and necessary for the operation and maintenance of the Corporation and its property, including the maintenance and repair of any Unit if the same is necessary to protect or preserve the Corporation's property or another Owner's property; provided, however, that the Board shall operate no other business for profit.

3.2 Number of Trustees and Qualification. The Board of Trustees shall consist of five (5) trustees, each of whom shall be an Owner in good standing, current on all assessments and with no outstanding or unremedied penalties or violations of these Bylaws or any of the Governing Documents of the Association.

3.3 Election and Term of Office. Trustees shall, as necessary, be elected at each annual meeting of Owners to hold office for a period of two (2) years until the annual meeting in the second year of each respective trustee's term of service. The trustees shall be so elected that the terms of three of the trustees will expire in the odd years and the remainder in the even years. However, trustees shall hold office until their successors have been qualified and elected. The trustees are elected by

majority vote of the Owners who are present and qualified to vote in person or by proxy and measured by the voting Owner's undivided percentage ownership interest in the Association.

3.4 Regular Meetings. The Board of Trustees may provide by resolution any reasonable date, time and place within the State of Utah, for the holding of regular meetings without notice other than such resolution.

3.5 Special Meetings. Special meetings of the Board of Trustees for any purpose may be called at any time by or at the request of the President of the Corporation or any two (2) trustees. The person or persons authorized to call special meetings of the Board of Trustees may fix any reasonable date, time and place within the Salt Lake County, State of Utah, as the place for holding any special meeting of the Board of Trustees.

3.6 Notice. Notice of the date, time and place of any special meeting shall be delivered personally or by telephone to each trustee or sent by first-class mail or telegram, charges prepaid, addressed to each trustee at that trustee's address as it is shown on the records of the Corporation. If the notice is mailed, it shall be deposited in the United States mail at least four (4) days before the time of the holding of the meeting. If the notice is delivered personally or by telephone or other electronic means, it shall be delivered personally or by telephone or electronically at least forty-eight (48) hours before the meeting begins. Any oral notice given personally or by telephone may be communicated either to the trustee or to a person at the office or home of the trustee who the person giving notice has reason to believe will promptly communicate it to the trustee. Any trustee may waive notice of any meeting by delivering written waiver with the Corporation to file in its corporate records, and attendance of a trustee at a meeting shall constitute a waiver of notice of such meeting, except where the trustee attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened and does not thereafter vote for or consent to action taken at the meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meetings of the Board of Trustees needs to be specified in the notice or waiver of notice of such meeting.

3.7 Quorum. A majority of the authorized number of trustees as fixed in accordance with these Bylaws shall constitute a quorum for the transaction of business at any meeting of the Board of Trustees, but if less than a majority is present at a meeting, a majority of the trustees present may adjourn the meeting from time to time without further notice.

3.8 Manner of Acting. The act of a majority of the trustees present at a meeting at which a quorum is present shall, unless the act of a greater number of trustees is required by the Articles of Incorporation of the Corporation of these Bylaws, be the act of the Board of Trustees.

3.9 Vacancies and Newly Created Trusteeships. Any vacancy occurring in the Board of Trustees may be filled by the affirmative vote of a majority of the remaining trustees, though less

than a quorum, or by the affirmative vote of the majority of Owners entitled to vote for trustees. A trustee elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office.

3.10 Presumption of Assent. A trustee who is present at a meeting of the Board of Trustees when corporate action is taken is considered to have consented to the action taken at the meeting unless the trustee objects at the beginning of the meeting, or promptly upon arrival, to holding the meeting or transacting business at the meeting and does not thereafter vote for or consent to any action taken at the meeting, or the trustee contemporaneously requests his dissent or abstention as to any specific action to be entered into the minutes of the meeting, or the trustee causes written notice of a dissent or abstention as to a specific action to be received by the presiding officer of the meeting before adjournment of the meeting or by the Corporation promptly after adjournment of the meeting.

3.11 Resignations. A trustee may resign at any time by giving a written notice of resignation to either the President of the Corporation, the Vice President, or the Secretary. Unless otherwise provided in the resignation, the resignation shall become effective when the notice is received by an officer or trustee of the Corporation. If the resignation is effective at a future time, the Board of Trustees may elect a successor to take office when the resignation becomes effective.

3.12 Action by Written Consent. Any action required to be taken at a meeting of the Board of Trustees of the Corporation or any other action which may be taken at a meeting of the Board of Trustees or of a committee, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all the trustees, or all of the members of the committee, as the case may be. Such consent shall have the same legal effect as a unanimous vote of all the trustees or members of the committee and may be described as such in any document. Action taken in this section is effective at the time the last trustee signs a writing describing the action taken unless the Board of Trustees establishes a different effective date.

3.13 Meetings by Telephone Conference Call. Members of the Board of Trustees, or any committee designated by the Board of Trustees, may participate in a meeting of the Board of Trustees or committee by means of conference telephone or similar communication equipment by which all persons participating in the meeting can hear each other. Participation in such a meeting shall constitute presence in person at such meeting.

3.14 Removal of Trustees. The Owners may remove one or more trustees at a meeting called for that purpose if notice has been given that a purpose of the meeting is such removal. The removal may be with or without cause unless the articles provide that trustee may only be removed with cause. If a trustee is elected by a voting group of Owners, only the Owners of that voting group may participate in the vote to remove him. If cumulative voting is authorized, a trustee may not be removed if the number of votes sufficient to elect him under cumulative voting is voted against his removal. If cumulative voting is not authorized, a trustee

may be removed only if the number of votes cast to remove him exceeds the number of votes cast not to remove him.

3.15 No Liability. Members of the Board of Trustees, the officers and any assistant officers, agents, and employees of the Corporation (i) shall not be liable to the Owners as a result of their activities as such for any mistake of judgment, negligence or otherwise, except for their own willful misconduct or gross negligence; (ii) shall have no personal liability in contract to an Owner or any other person or entity under any agreement, instrument, or transaction entered into by them on behalf of the Corporation in their capacity as such; (iii) shall have no personal liability in tort to any Owner or any person or entity, direct or imputed, by virtue of acts performed by them, or acts performed for them in their capacity as such; and (iv) shall have no personal liability arising out of the use, misuse, or condition of the Corporation's property, which might in any way be assessed against or imputed to them as a result or by virtue of their capacity as such.

3.16 Indemnification. The Owners shall indemnify and hold harmless, any person, his heirs and personal representatives, from and against all personal liability and all expenses including counsel fees, incurred or imposed, or arising out of or in settlement of any threatened, pending or completed action, suit or proceedings, whether civil, criminal, administrative or investigative instituted by any one or more Owners, or any other persons or entities, to which he shall be or shall be threatened to be made a party by reason of the fact that he is or was an Owner of the Board of Trustees or an officer or assistant officer, agent or employee of the Corporation, other than to the extent, if any, that such liability or expense shall be attributable to his willful misconduct or bad faith.

ARTICLE 4 OFFICERS

4.1 Designation of Officers. The officers of the Association shall be the same officers as the officers of the Board of Trustees and may only be comprised of members of the Board of Trustees. The officers shall be a President, Vice President, Secretary, Treasurer, and Member at Large. The Board may appoint other assistant officers as the Board may deem necessary. The offices of President and Secretary may not be held by the same person. No officer shall receive compensation for serving as such. An officer may hold an office for as many terms as the Board may determine. The Board may, in its discretion, require that officers (and other employees of the Corporation) be subject to fidelity bond coverage.

4.2 Resignations. Any officer may resign at any time by delivering a written resignation to the Board of Trustees, the President, or the Secretary. Unless otherwise specified

therein, such resignation shall take effect upon such delivery of the resignation; and, unless otherwise specified in the resignation, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Corporation under any contract to which the officer is a party.

4.3 Removal. Any officer may be removed by the Board of Trustees by a majority vote of the Board whenever in its judgment the best interest of the Corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

4.4 Vacancies and Newly Created Offices. A vacancy in any office by reason of death, resignation, removal, disqualification, the creation of a new office or otherwise, may be filled by the Board of Trustees at any regular or special meeting or by the unanimous written consent of the trustees.

4.5 President. Unless the Board of Trustees shall otherwise determine, the President shall be the chief executive officer of the Corporation, and shall, subject to the control of the Board of Trustees, have general supervision, direction and control of the business, officers, employees, and agents of the Corporation. The President shall, when present, preside at meetings of the Owners and at all meetings of the Board of Trustees except as provided otherwise by the Board of Trustees. The President shall have the general powers and duties of management usually vested in the office of President of a Corporation and shall have such other powers and duties as may be prescribed by the Board of Trustees or these Bylaws.

4.6 Vice President. If appointed, in the absence of the President or in the event of his death, inability or refusal to act, the Vice President (or in the event there be more than one Vice President, the Vice Presidents in the order designated at the time of their election, or in the absence of any designation, then in the order of their appointment) shall perform the duties of the President, and when so acting shall have all the powers of and be subject to all the restrictions upon the President. (If there is no Vice President, then the Treasurer shall perform such duties of the President.) Any Vice President shall perform such other duties as from time to time may be assigned to him by the President or by the Board of Trustees.

4.7 Secretary. The Secretary shall keep or cause to be kept at the principal office of the Corporation or such other place as the Board of Trustees may direct, all the records required to be kept by the Association pursuant to applicable law as set forth in Section 2.15 above. The Secretary shall cause all notices of meetings to be duly given in accordance with the provisions of these Bylaws and as required by applicable law. The Secretary shall see that the books, reports, statements, and other documents and records required by law are properly kept and filed. The Secretary shall have charge of the records of the Corporation and, including the records

showing the names of the each Owner and the undivided percentage interest each has in the Association, which shall be kept in such manner as to show at any time the alphabetically arranged names and the addresses of the interest holder Owners of record thereof. The Ownership record shall be maintained at the principal office of the Corporation for the purposes provided by law and these Bylaws. The Secretary shall perform all duties incident to the office of Secretary and such other duties as are given to him or her by law or these Bylaws or as from time to time may be assigned by the Board of Trustees.

4.8 Treasurer. The Treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the Corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital reserve account, etc., which shall at all reasonable times be open to inspection by any trustee. The Treasurer shall deposit all money and other valuables in the name and to the credit of the Corporation with such depositories as may be designated by the Board of Trustees. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board of Trustees, shall render to the President and trustees, whenever they request it, an account of all of transactions taken as Treasurer and of the financial condition of the Corporation, and shall have such other powers and perform such other duties as may be prescribed by the Board of Trustees or these Bylaws.

4.9 Member at Large. The Member at Large receives authority and specific responsibilities from the President of the Corporation, for project oversight, and completion as deemed necessary. The Member at Large holds the same fiduciary duties and responsibilities as other Board members and has equal authority to operate within the Association's approved governing documents. The Member at Large may fill the role of committee chair of multiple committees at the same time, as needed. A Member at Large is a person who is able to manage a wide variety of projects and assignments. This may include leading several subcommittees that are independent of other Board members or the property manager.

ARTICLE 5 EXECUTION OF INSTRUMENTS, BORROWING OF MONEY AND DEPOSIT OF CORPORATE FUNDS

5.1 Instruments. The Board of Trustees may authorize any officer, agent, or agents, to enter any contract or execute and deliver any instrument in the name of, and on behalf of, the Corporation, and such authority may be general or confined to specific instances.

5.2 Loans. No loan or advance shall be contracted on behalf of the Corporation, no negotiable paper or other evidence of its obligation under any loan or advance shall be issued in its name, and no property of the Corporation shall be mortgaged, pledged, hypothecated, transferred, or conveyed as security for the payment of any loan, advance, indebtedness, or liability of the

Corporation, unless and except as authorized by the Board of Trustees. Any such authorization may be general or confined to specific instances.

5.3 Deposits. All monies of the Corporation not otherwise employed shall be deposited from time to time to its credit in such banks or trust companies or with such bankers or other depositories as the Board of Trustees may select, or as from time to time may be selected by any officer or agent authorized so to do by the Board of Trustees.

5.4 Checks, Drafts, etc. All checks, drafts, acceptances, notes, endorsements, and, subject to the provisions of these Bylaws, evidence of indebtedness of the Corporation shall be signed by the President or Vice President and one other officer of the Corporation or in such other manner as the Board of Trustees from time to time may determine. Endorsements for deposit to the credit of the Corporation in any of its duly authorized depositories shall be in such manner as the Board of Trustees from time to time may determine.

ARTICLE 6 TRANSFER OF MEMBERSHIP

6.1 Transfer of Membership. Transfers of membership(s) in the Corporation shall be made only upon membership books of the Corporation kept at an office of the Corporation.

6.2 Restrictions on Transfer of Membership. The Board of Trustees and/or the Owners may, as they may deem expedient, impose restrictions on the transfer of membership in the Corporation. The restriction shall affect all Owners as of the date said restriction is adopted without regard to whether a particular Owner voted in favor of the restriction or otherwise consented to the restriction.

ARTICLE 7 NOTICES, WAIVER OF NOTICE

Except as expressly provided to the contrary in the Articles of Incorporation or these Bylaws, any notice permitted or required to be delivered as provided herein may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to be delivered upon being deposited in the United States mails, postage prepaid, except as may be provided by law. Notice to Owners shall be addressed to each Owner at the address, physical or electronic, given by such Owner to the Board of Trustees for the purpose of service of such notice or to the Unit of such Owner if no such address is given to the Board. Such address may be changed from time to time by notice in writing to the Board. Notice to the Board shall be addressed to its current presiding officer. Any Owner may at any time waive any notice required to be given under these Bylaws, or by statute or otherwise. The presence of an Owner in person at any meeting of the Owners shall be deemed such a waiver.

ARTICLE 8
MAINTENANCE AND INSPECTION OF BOOKS AND RECORDS

The Corporation shall keep correct and complete books and records of account and shall keep minutes of the meetings of its Owners and Board of Trustees; and shall keep at its registered office or principal place of business a record of its Owners, giving the names and addresses of all Owners and the percentage interest in the Corporation held by each. Any Owner shall have the right to examine in person the Corporation's books and records as provided for in these Bylaws.

ARTICLE 9
MISCELLANY

The fiscal year of the Corporation shall be fixed by resolution of the Board of Trustees.

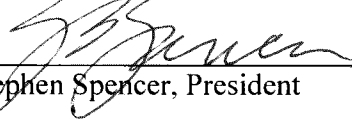
9.1 No Waiver. The failure of the Board of Trustees, or its agents or designees, to insist, in one or more instances, upon the strict performance of any of the terms, covenants, conditions, or restrictions of the Articles of Incorporation, these Bylaws or any rules and regulations promulgated hereunder, or to exercise any right or option herein contained, or to serve any notice or to institute any action shall not be construed as a waiver or relinquishment, for the future, of such term, covenant, condition, or restriction; but such term, covenant, condition, or restriction shall remain in full force and effect. The receipt and acceptance by the Board or its agents or designees of the payment of any assessment from an Owner, with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by the Board of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board.

9.2 Amendment. These Bylaws may be amended by the vote of Owners holding at least sixty-seven percent (67%) of the Undivided Interests at a meeting duly called for such purpose regarding the following Articles and sections (Article 2: 2.1, 2.3, 2.8, 2.11, 2.12, 2.13, 2.14, 2.15, 2.16; Article 3: 3.2, 3.3, 3.14; Article 9: 9.2) OR a unanimous vote of the Board of Trustees at a meeting duly called for such purpose for all other Articles and sections. Upon such an affirmative vote, the Board shall acknowledge the amended Bylaws, setting forth the fact of the required affirmative vote and the amendments shall be effective upon recording.

9.3 Severability. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion hereof shall not affect the validity or enforceability of any other provisions hereof.

9.4 Headings. The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of these Bylaws nor the intent of any provision hereof.

APPROVED this 30th day of December, 2022.



Stephen Spencer, President